

**RUPERTA, MARIA, FRANCISCO AND FELIX BERCEÑO, PETITIONERS,
VS. BUENAVENTURA OCAMPO AND JOSE SOTELO. RESPONDENTS.***G.R. No. 48936. June 22, 1943*

Ponente: BOCOBO, J.

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The question in this case is whether the loss of a sum deposited with the Clerk of Court to answer for Attorney's Fees, during the pendency of an appeal, exempts the distributees of the estate of a deceased person from paying the fees, the attorney having rendered his services to the estate. From an order of the respondent court compelling said distributees to pay the fees to respondent attorney, the petitioners have appealed to this Court.

It appears that Attorney Jose Sotelo had been rendering services to the estate of Juan de la Vina in the special proceedings before the Court of First Instance of Manila. The universal heir of Juan de la Viña was his wife Julia Berceño, who also died before the final settlement of her husband's estate. Julia Berceño's heirs are her brothers and sisters, petitioners herein. Tho Court of First Instance, on April 8, 1940, ordered the administrator of the estate of Juan de la Viña to pay the fees, of Attorney Jose Sotelo. The administrators of both estates—of Juan de la Vina and Julia Berceño—appealed from that order to the Court of Appeals. After the perfection of that appeal, and under date of May 27, 1940, the Court of First Instance ordered the estate of Julia Berceño (to which all the property or the estate of Juan de la Viña had passed in the meantime by authority of the court) to file a bond in the amount of P4,200 or deposit that amount with the Clerk of Court to answer for the outcome of the appeal from the order of April 8, 1940 ("para estar a las resultas de la apelacion interpuesta"). Accordingly, on August 2, 1940, the estate of Julia Berceño deposited P4,200 with the Clerk of Court. The Court of Appeals later affirmed the order referred to but reduced the amount of fees to P4,200, from which the sum of P1,464 which had already been received by Attorney Jose Sotelo, should be deducted. The petitioners have already receive their shares of the estate of Julia Berceño, which has been settled.

In an order dated January 25, 1943, the respondent court ordered petitioners herein to pay, in the respective portions therein stated, the respondent Attorney Jose Sotelo the sum of P2,736 within ten days; otherwise, a writ of execution would be issued. That order is questioned by petitioners in this appeal.

Petitioners contend that respondent Attorney Sotelo became the owner of P2,736 (the unpaid balance of the fees due him) from the date of the deposit, and he should therefore bear the loss, while petitioners themselves should also bear the loss of P1,464. To support this theory, counsel for petitioners cites our resolution in *Gutierrez vs. Gutierrez*, G. R. No. 48055 (dated December 23, 1942) denying a motion of respondent therein for a writ of execution against petitioner therein, the money deposited for costs having been lost in the government treasury on account of the present emergency. However, we believe and so hold that there is a clear distinction between a deposit for costs and the deposit under consideration. Attorney Sotelo is a creditor of the estate of Julia Berceño (which succeeded to the assets and liabilities of the estate of Juan de la Viña). As such creditor, he has a statutory lien against said estate of Julia Berceño. (*Suiliong & Co. vs. Chio-Taysan*, 12 Phil., 13; *Enriquez vs. Panopio*, G. R. No. 48891, May 28, 1943.) Was such lien extinguished by the mere deposit of P4,200 with the Clerk of Court?

No, because the deposit was simply a guarantee or security for such amount of fees as may be adjudicated, pending the appeal regarding the fees. It partakes of the nature of the bond required by Rule 91, Section 1, 2nd paragraph, of the Rules of Court, which provides:

"No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs."

In fact, the Court of First Instance in its order of May 27, 1940, required the estate of Julia Berceño either to file a bond in the amount of P4,200 or to deposit that amount with the Clerk of Court. Certainly, the character of the liability of the estate is not altered by the fact that the estate chose to deposit the amount, instead of filing a bond. As a matter of fact, it was not necessary for the petitioners either to make a deposit or file a bond, because in the absence of bond or deposit all the assets of the estate responded, for the claim. The order of the court requiring either bond or deposit was made for the convenience of the distributees, to enable them to get their shares pending their appeal against the allowance of Attorney Sotelo's claim. Therefore, the claim of Attorney Sotelo for fees can be enforced against the distributees of the estate of Julia Berceno, even after the loss of the amount deposited.

On the other hand, a deposit for costs made by a party in a suit constitutes payment in advance of a fixed and definite sum to the other party, if the latter should win the case. The deposit for costs in this Court is obligatory on the depositor because it is a condition precedent to the admission of his petition or the allowance of his appeal. And the adverse party has no lien against all the property, of the depositor, as in the instant case. The sum deposited for costs is a specific amount, held in trust by the government for the other party if and when the latter should succeed. If the amount is later lost by force majeure, the depositor cannot again be made liable, as we held in the Gutierrez case, *supra*.

Furthermore, equitable considerations compel petitioners to satisfy this lien against the property which has been distributed to and among them. The assets of Juan de la Vina have passed to them through inheritance from their sister, Julia Berceño the universal heir of Juan de la Vina. The deposit made by the petitioners having been lost through no negligence of either Attorney Sotelo or the petitioners, the latter should not be permitted to evade liability to pay for services rendered for the benefit of the estate from which the property already received by them originally came. There is still more than sufficient of that property in the hands of petitioners to satisfy this just and lawful debt of the original estate. Weighing the equities due both sides and neither being at fault, the balance must incline toward Attorney Jose Sotelo who should be paid for services actually rendered, rather than toward petitioners who have come to this inheritance through the bounty of their sister, the deceased Julia Berceño. As between hard toil and an act of liberality of the testatrix, the choice is not difficult to make. The principle underlying this just solution is recognized in positive legislation, such as the lien of creditors against the estate of deceased persons, and the inheritance tax laws which discourage gratuitous transmission of property.

Petitioners' counsel advances" the theory that the estate of Julia Berceño having been closed, there should be a prior declaration in a separate and independent proceeding to the effect that the heirs (petitioners herein) are liable, before the Court of First Instance can acquire jurisdiction to make the heirs pay this debt. But the obligation of both estates of Juan de la Viña and JuJia Berceno for the payment of the attorney's fees having become final upon the affirmance by the Court of Appeals of the order of the Court of First Instance dated April 8, 1940, this point of the respondent's counsel is not well taken. The estate of Julia Berceño (which succeeded to the rights and liabilities of the estate of Juan de la Vina) being liable, the responsibility of the distributees of Julia Berceno's estate necessarily follows. Further declaration to that effect in a separate action would be superfluous.

Wherefore, the order of January 25, 1943, requiring the petitioners herein to pay the respondent Attorney Jose Sotelo the sum of P2,736 under the terms stated therein, should be and is hereby affirmed, with costs against

petitioners. So ordered.

Yulo, C. J., Moran, Ozaeta and Paras, JJ., concur.

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