

**QUINTIN CHAN, PETITIONER, VS. HONORABLE FIDEL VILLANUEVA,
JUDGE OF THE COURT OF FIRST INSTANCE OF LA UNION, AND
MARIANO FLORES, IN HIS CAPACITY AS ACTING DISTRICT
ENGINEER OF LA...**

G.R. No. L-5420. April 30, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari seeking the annulment of an order of the Court of First Instance of La Union which directs Deputy Provincial Sheriff Emilio F. de Guzman to return to respondent Mariano Flores, in his capacity as acting district engineer, the chattels involved in the case upon filing by him of a bond in the amount double their value and warning said sheriff to be more careful in the future in the performance of official duties.

On December 20, 1951, petitioner filed an action in the above mentioned court against respondent Mariano Flores for the delivery by the latter to the former of certain chattels valued at P4,408.02, with a prayer for the issuance of a writ of preliminary attachment.

The petition for preliminary attachment was granted, the court fixing the bond to be filed by petitioner in the sum of P9,000. The bond having been put up, the writ was issued directing the provincial sheriff to take into his custody the chattels subject of the controversy. This was done on December 27, 1951, after serving copy of the writ on respondent Mariano Flores.

On January 2, 1952, at 4: 00 o'clock in the afternoon, the sheriff delivered the chattels to petitioner for the alleged failure of respondent to file a counter-bond within the reglementary period of five days, but in the afternoon of the same date, January 2, 1952, at 4:45 to be exact, respondent filed a motion for the return of the property to him attaching thereto a certificate of the municipal treasurer of Agoo, La Union, in lieu of the counter-bond required by the Rules of Court.

This motion was set for hearing on January 3, 1952, and after it was heard and argued, the court granted the motion ordering the sheriff to return the properties to respondent upon filing by him of a bond as stated in the early part of this decision. Petitioner now comes to this Court alleging that the respondent Judge acted in excess of his jurisdiction when he ordered the sheriff to return the properties to the respondent inspite of his failure to put up the required counter-bond within the period of five days fixed by the Rules of Court.

We disagree with this contention of petitioner. It appears that the chattels subject of the controversy were attached by the sheriff on December 27, 1951, after serving a copy of the writ of attachment on the defendant on the same date. Under section 6, Rule 62 of the Rules of Court, in connection with section 5, the defendant may require the return of the property within the period of five days from notice of attachment by filing with the clerk of court a bond in double the value of the property involved and furnishing a copy of the bond to the plaintiff. Ordinarily, the five-day period counted from December 27, 1950, should end on January 1, 1952, but as the latter day was

legal holiday, the legal period has to be extended to the next succeeding day, or January 2, 1952, as required by law (section 29, 31, Revised Administrative Code). It would therefore appear that if the defendant desires to have the property attached returned to him it is his duty to put up the necessary bond before the expiration of the legal period ending January 2, 1952, and the defendant having complied with this legal requirement the the sheriff became obligated to return the property to him as required by law.

It is true that the counter-bond put up by the defendant was filed with the clerk of court only at 4:45 in the afternoon of January 2, 1953, that is, after the closing of the official hours observed in the government service. But this is of no moment considering that under the law a day shall be understood to have 24 hours, or up to 12:00 o'clock at night (Article 13; Revised Administrative Code; Article 13 new Civil Code). The official hours required to be observed in the government service cannot be reckoned with in computing any fixed period of time with reference to the performance of an act required by law. This must be determined in accordance with the law on the computation of time (Sec. 13, Revised Administrative Code).

With regard to the point that the counter-bond filed by the defendant to secure the return of the property attached by the sheriff is not the one required by the Rules of Court (Sec. 4, Rule 59) because it is a mere certificate of the municipal treasurer of Agoo, La Union, making available the sum of P9,000 to satisfy the judgment that may be rendered in favor of the plaintiff, it suffices for us to state that said certificate is a substantial compliance with the rule with the particularity that the undertaking involves a cash liability affecting public fund. Moreover, this suit is in effect a suit against the Insular Government, involving as it does insular funds, and under the law the government is exempt from filing a bond (*Tolentino v. Carlos*, 39 Off. Gaz. p. 121).

All things considered, we are of the opinion that the respondent Judge acted in accordance with law in issuing the order subject of the present petition for certiorari.

The petition is dismissed, with costs against petitioner.

Paras, C.J., Feria, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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