

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MAMERTO DE LA CRUZ, DEFENDANT. BENIGNO ILAGAN,
CHRISTOPHER VALENCIA AND TIMOTEO VALENCIA, SURETIES AND
APPELLANTS.**

G. R. No. L-5794. July 23, 1953

Ponente: TUASON, J.

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TUASON, J.:

This appeal is from an order of the Court of First Instance of Quezon for the appellants, as sureties for an accused who had escaped, to show cause why the bail bond should not be forfeited, and another order denying their motion to be discharged as sureties. The bail has not actually been forfeited and much less have the appellants been required to pay the amount thereof, but it is assumed that they would be unless the orders on appeal were set aside.

The facts are not in dispute. It will be well to sacrifice brevity in the recital of the facts the better to understand and appreciate the main issue and the discussion that will follow. The main issue is whether the actions of the sureties, of the court, and of the government, to be presently set forth, worked to cancel the bail or exonerate the appellants.

Mamerto de la Cruz was charged with theft of large cattle in the court of justice of the peace of Tagkawayan, Province of Quezon, by reason of which on December 31, 1946, he put up a bond of P1,500 signed by the three appellants herein. Preliminary investigation of the complaint was conducted on January 2, 1947, after which, on the same date, the defendant was bound over to the Court of First Instance for trial. The Provincial Fiscal filed an information on January 9, and the case was set for arraignment of the accused for January 31.

Meanwhile, i.e., on December 24, 1946, the Justice of the Peace of Paracale, Camarines Norte, had issued a warrant for the arrest of the same defendant, also for thefts of large cattle, which warrant a squad of constabulary soldiers headed by one Sergeant Andres Agustin from Camarines Norte came to Tagkawayan to execute. Appraised of that fact, the sureties surrendered De la Cruz to the Mayor of that municipality, and that official took him into custody and forthwith turned him over to the Justice of the Peace, who in turn delivered him over to the constabulary soldiers from the adjacent province. Then and there, in a writing dated January 14, 1947, Sgt. Agustin acknowledged receipt of the prisoner and further stated, among other matters: "Subject to action by superior authorities, I undertake to bring back the person of said Mamerto de la Cruz to Tagkawayan, Quezon, whatever may be the result of the investigation to be made by the Justice of the Peace of Paracale, Camarines Norte, so that said accused may be transmitted to Lucena, Quezon, to answer for the criminal case No. 656 of that court."

Let us return to developments in Lucena.

Notice of the order setting the case for arraignment for January 31 was sent on January 16 by the Provincial

Sheriff to the Chief of Police of Tagkawayan as ex-officio Deputy Sheriff for service to the bondsmen. On January 18, the Chief of Police of Tagkawayan returned the notice to the Provincial Sheriff with the information that the bondsmen "refused to sign the subpoena because the accused Mamerto de la Cruz is held for trial at the Justice of the Peace Court of Paracale, Camarines Norte." Thereupon, on January 20, the Clerk of Court of Quezon transmitted the notice direct to the Chief of Police of Paracale, Camarines Norte, but none to the bondsmen, who from this time on were bypassed. On January 25, the Chief of Police of Paracale returned the notice to the Court of First Instance of Quezon stating that Mamerto de la Cruz was being detained in the provincial jail at Daet, Camarines Norte, awaiting trial. The Paracale Chief of Police added that the cases with the accused had been elevated to the Court of First Instance at Daet on the 18th of January by the Justice of the Peace of Paracale. The Chief of Police attached to his communication a copy of the receipt of the prisoner signed by the Clerk of Court of Camarines Norte.

On February 1, the Clerk of Court of Quezon wrote the Provincial Warden at Daet, Camarines Norte, for confirmation of the Paracale Chief of Police's communication, with a request for an early reply, and on February 6, the Provincial Warden answered "that Mamerto de la Cruz was already confined in the provincial jail of Daet, Camarines Norte, since January 18, 12:30 p.m., 1947."

In view of the defendant's arrest and detention in Camarines Norte, on February 11 Judge Antonio Cañizares of the Court of First Instance of Quezon reset the case in an order of the following tenor: "Apareciendo del informe del Alcaide Provincial de Daet, Camarines Norte, que el acusado Mamerto de la Cruz se halla detenido en la carcel provincial de dicha provincia, se señala la vista de esta causa para el dia 25 de Marzo de 1947, a las ocho y media de la mañana." On the same date His Honor appointed an attorney de oficio to defend the defendant. On his part the Clerk of Court forwarded to the Provincial Sheriff of Camarines Norte at Daet, for service on Mamerto de la Cruz, notice in judicial form No. 65 informing the prisoner that his case was set for arraignment and hearing for March 25th.

For reasons not disclosed by the record, on February 13, the arraignment and hearing was ordered postponed for March 31 and notice of the postponement was forwarded on February 14 by registered mail to the Provincial Sheriff of Camarines Norte for service on Mamerto de la Cruz. On February 17, the Provincial Sheriff through a deputy returned the notice to the Clerk of Court of Quezon with the information that it had been duly served.

On February 26, Mamerto de la Cruz escaped from the provincial jail at Daet. Unaware, apparently, of that escape, the Provincial Fiscal of Quezon moved for postponement of the arraignment and hearing from March 31 to another date, alleging that he was "contemplating to conduct a reinvestigation of the case to secure additional evidence," and the court ordered that the case be included in the next April calendar.

Nothing seems to have been done on the case until December of the same year (1947), when notice was sent by the Clerk of Court of Quezon by registered mail to the Provincial Sheriff of Camarines Norte for service on the prisoner through the Provincial Warden. On December 18, the Provincial Warden informed the Camarines Norte Provincial Sheriff that the prisoner had escaped in February (ten months ago), which information was transmitted to the Quezon Court of First Instance on the same date.

Because of that information, so it seems, trial of the case in Lucena was set for February 23, 1948, and from that date postponed to March 17. On the latter date Judge Arguelles, then presiding, having "been informed by the fiscal that the accused had escaped," had the case dropped from the calendar until further assignment, and ordered the arrest of the escaped prisoner. Still no order to produce the accused or notice of the hearing was given the sureties.

In an order dated December 10, 1948, the case was put on the calendar for January 10, 1949, by Honorable

Victoriano, now the presiding Judge. Before the latter date, the Fiscal filed a motion for an indefinite postponement of the trial because of the prisoner's escape. Nevertheless, on the scheduled date, January 10, the case was called.

It was then that the bondsmen were given by Judge Victoriano 30 days within which to show cause why the bail should not be forfeited. In the same order His Honor, Judge Victoriano, noted that the bondsmen had refused to sign the subpoena on the ground that they had already withdrawn as such.

In *United States vs. Bonoan*, 22 Phil., 1, it was held that it was a good defense in an action on a bail bond for the sureties to allege that the indicted person was, when his production was ordered, in prison in another province for another offense.

The facts of that case were substantially identical with those of the instant case. As summarized in the syllabus of the decision they were as follows:

Mandac was allowed bail by the Court of First Instance of Ilocos Norte while his case was on appeal in the Supreme Court from a sentence for homicide. While at liberty, he committed the crime of bandolerismo in Nueva Vizcaya, for which he was arrested. His appeal having been declared deserted by the Supreme Court, the sentence was remanded for execution. At the precise time the lower court called upon his bondsmen for his appearance, their principal was under arrest in Nueva Vizcaya, whose authorities refused to surrender him to the said bondsmen.

The Solicitor General would distinguish between that case and the case at bar because "the sureties in the Bonoan case could have produced the accused in court were it not for the refusal by the provincial authorities of Nueva Vizcaya to surrender him." In other words, Bonoan and his fellow-sureties made an effort to bring Mandac from Nueva Vizcaya while the sureties here did nothing of the sort.

It is not easy to see how the failure of the appellants herein to claim Mamerto de la Cruz from the authorities of Camarines Norte can influence the result of this appeal. In the first place, the unsuccessful attempt by Mandac's sureties to get their principal was not the ratio decidendi of the judgment or the underlying reason for exonerating them. In the second place, law does not require the useless or the impossible. The Camarines Norte authorities could hardly be expected to let the bondsmen have the prisoner if they had demanded his custody for the purpose of presenting him to the Court of First Instance of Quezon Province. As a matter of fact, it was the court alone which could demand the transfer of the accused to Quezon; and the court far from doing something in that direction, appeared from all indications to be satisfied with holding the case before it until the Camarines Norte cases were finished.

It is pointed out that the appellant did not surrender the accused to the court as provided by section 16 of Rule 110, according to which, "upon application filed with the court and after due notice to the fiscal, the bail shall be cancelled and the sureties discharged from liability (a) where the sureties so request upon surrender of the defendant to the court; * * *." But this Rule has no bearing on the case, in our opinion. Manifestly it has in view a situation where the prisoner is at the disposal of his sureties and these wish to be released from their obligation on the bond before its terms are broken. The sureties' rights, duties, and liabilities after the prisoner has absconded, or when for one reason or another he cannot be found, must be controlled by other statutory provisions or by the general principles of contract. Bail is nothing but a contract. (*U. S. vs. Bonoan*, *supra*)

In consonance with these principles, "It is the settled law of this class of cases that the bail will be exonerated where the performance of the condition is rendered impossible by the act of God, the act of the obligee, or the act of law." (*Taylor vs. Taintor*, 83 U. S., 366, cited in *U. S. vs. Bonoan*, *supra*). And so the Court reasoned on

Bonoan's appeal:

"The United States, the plaintiff in the homicide case against Mandac, was the obligee in the bond. The same plaintiff and obligee caused the arrest and confinement of Mandac in Nueva Vizcaya on a charge of bandolerismo and refused to surrender him to the appellants. It would be against all principle of equity and justice to allow the Government to recover against the sureties for not producing their principal when it had itself placed the principal beyond their reach and control. There was an implied covenant on the part of the Government when the bond was accepted that it would not in any way interfere with the due compliance of the conditions in the bond or take any proceeding against the principal which would affect the rights of the sureties. *Reese vs. U. S.*, 13, citing *Rathbone vs. Warren*, 10 Jones 586; etc.

* * * * *

"The Government had a perfect right to arrest and hold Mandac in the Province of Nueva Vizcaya on the charge of bandolerismo. It also had the right to decline to surrender him to these appellants. But it cannot by these acts prevent the fulfillment of the conditions in the bond by the sureties, and at the same time force the sureties to pay the amount of the bond."

What material differences there are between the Bonoan case and the case at hand will be found to improve the herein appellants' position. As already noted, soon after Mamerto de la Cruz was arrested in Tagkawayan and conducted to Camarines Norte—to be exact, on January 18 (the escape took place on February 26)—the sureties refused to accept service of notice of hearing and informed the court through the Provincial Sheriff that their principal was being held for trial in other cases in Camarines Norte, and gave the court to understand that, for that reason, they could not effect his appearance and were not obligated to do so. And from that time on the court dealt directly and exclusively with Camarines Norte officials, not bothering any more in any manner with the sureties. The court did not tell the sureties to produce the defendant until 1949, more than two years after his escape and after it had notice of the escape. When the accused was still in jail the court did not insinuate to the sureties that they should go and fetch him. If it had, it is to be presumed that the sureties would have followed the indication, much as they realized the futility and senselessness of the step. As it was, the court by its action led the sureties into believing, and these had every reason to believe all that time, that what they had done was enough and that their connection with the case had been terminated. From this standpoint, incidentally, the Government may rightly be considered estopped by laches.

If this appeal must be decided within the confines of section 16 of Rule 110, as the appellee would have it, the preceding circumstances and discussion could supply the argument that the appellants did substantially comply with the terms of their undertaking. It has been seen that if the sureties did not bring the person of the accused to court, which they were powerless to do due to causes brought about by the Government itself, they did the next best thing by informing the court of the prisoner's arrest and confinement in another province and impliedly asking that they be discharged. On its part, the court, by keeping quiet and, indeed, issuing notices of the hearings direct to the prisoner through the Sheriff of Camarines Norte and ignoring the sureties, impliedly acquiesced in the latter's request and appeared to have regarded the accused surrendered. All signs combined to give the impression that the court in reality had that precise notion and intent.

As to the Provincial Fiscal, no notice of the sureties' desire to be discharged was furnished him. But there is every reason to believe that he learned of all that happened. Having control of the case, he must have known of its various continuances and the reasons therefor. What is more, notice to the Provincial Fiscal of the sureties' request for discharge would have been a useless formality. There is no suggestion that office would have opposed or could have done anything to change the bondsmen's status and responsibility or otherwise protect the interest of the Government if he had been given formal notice. And again, the Government can not very well complain that

the prosecuting officer was not informed in writing of De la Cruz's detention in Camarines Norte and the bondsmen's desire to be relieved of all obligation, when it itself, through other agencies, effected the detention. Lastly, the Fiscal appears to have been satisfied with the manner in which the sureties proceeded in the premises, as evidenced by his making no move whatever to have them brought to account. The order to the sureties to explain why their bail should not be forfeited was of the court's own initiative, even in disregard of the Fiscal's motion to continue the scheduled trial indefinitely.

Unversed in the manners of court and law, the appellants may not have followed the prescribed procedure to the letter, but they tried with all the diligence at their command to live up to their commitment the best they knew how and the court and the Government's representative acquiesced in what they had done and the form in which they had acted.

One important point to be kept in mind in this discussion is that sureties are said to be favorites of the law. Assuming an obligation without any thought of material gain, except in some instances, all presumptions are indulged in their favor. This rule is especially to be adhered to with respect to bail, which is a right ensured by the Constitution as a matter of the highest public concern and policy.

Accordingly it is the judgment of this Court that the appellants should be discharged as sureties for Mamerto de la Cruz, and it is so ordered, without costs.

Paras, C. J., Pablo, Bengzon, Padilla, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

DISSENTING

MONTEMAYOR, J.,

From the majority opinion discharging the appellants as sureties, I dissent.

In great measure the majority relies on the case of *U. S. vs. Bonoan* (22 Phil., 1), and it is claimed that the ratio decidendi in said case was not the unsuccessful attempt by the sureties to get the accused from the Nueva Vizcaya authorities and present him to the Court of First Instance of Iloeos Norte. I am afraid that claim is untenable. I hold that the only reason why the Supreme Court in that case exonerated the sureties was because the Nueva Vizcaya authorities refused to give up Mandac to them. And that is why the court said that it would be against all principle and justice to allow the Government to recover against the sureties for not producing their principal when it had itself placed the principal beyond their reach and control. And to further show that the ratio decidendi of the case was the refusal of the Nueva Vizcaya authorities to give the defendant up, said sureties gave as reason for their failure to produce Mandac before the court the fact that the Nueva Vizcaya authorities refused to give him up; and the decision of this Court in that case mentioned this refusal thus:

"* * * It is admitted by all parties * * * that the said authorities (Nueva Vizcaya) refused to turn him over to the appellant bondsmen for the purpose of presentation to the Court of First Instance of Iloeos Norte; * * *

"* * * The same plaintiff and obligee (United States) caused the arrest and confinement of Mandac in Nueva Vizcaya on a charge of bandolerismo and refused to deliver him up to the appellants." (22 Phil., 1, 4, and 5).

The very majority opinion in citing the case of Mandac states that the Nueva Vizcaya authorities refused to surrender him to the appellant bondsmen.

The rule cannot be otherwise. The mere arrest of a defendant out on bail, for the commission of another crime in another province, does not ipso facto release the sureties in the first case. While said defendant is confined in the

second province under the second charge, the obligation and liability of the surety on the bail in the first charge is merely suspended, dormant, unless, of course, as in the case of Mandac, they tried to get the defendant from the authorities in the second province to present him to the court of the first province and they were refused by the authorities. Any other rule would be unfair and disastrous to the Government.

Supposing that A is arrested on a charge of murder and before trial, he is released on bail, but because of the strength of the evidence against him, the amount of the bond is fixed at P30,000. Let us further suppose that now free, A goes to another province and commits a light offense or misdemeanor penalized with *arresto menor*. Does it mean and could it mean that for the arrest under the second charge of said light offense or misdemeanor, the sureties on the bail bond of P30,000 are automatically released? If so, then what assurance or guarantee has the court in the first province before which the charge of murder is pending, that A will appear at the trial, if we assume that his sureties have already been released on their bond? A, in this case, for the light offense committed in the second province may at any time be released on bail for, say P50 or a P100. But even if he were not released on bail under the second charge, considering the lack of facilities of small towns or municipalities for keeping prisoners, and considering the lax methods of confining them, specially those charged only with a light offense, he could easily escape. Whether he escapes from the town jail or is let out on bail of say P50 or P100, he is completely free and at liberty, without any bail on the serious charge of murder in the first province, this under the theory of the majority that his second arrest for misdemeanor automatically cancelled his bond on the murder charge. It is not difficult to imagine the serious consequences of such a rule. I hold that the subsequent arrest for another charge in another province of a person out on bail in the first province on a different charge, does not automatically exonerate and release his sureties, but that the obligation of said sureties is merely suspended.

"The subsequent arrest or custody of the principal on another charge, or in other proceedings, "while he is out on bail, does not operate ipso facto as a discharge of his bail, but its effect depends on its continuance at the time the principal is bound to appear. For example, where the removal of a prisoner by a court of competent jurisdiction beyond the control of the bondsmen continues through the term at which he is bound to appear, thus rendering them unable to produce him at the time and place set for trial in accordance with the obligation, it constitutes an act of law which discharges the sureties. Until the time for trial the rights and liabilities of the bail are dormant only, and revive the moment the principal is free again, so that if, while in custody on another charge, he escapes, or is again discharged, and is a free man when called upon his recognizance to appear, his bail are bond to produce him." (8 C. J. S., Bail sec. 77 p. 148.)

The majority opinion leans heavily on the circumstance that the Court of Quezon Province by-passed the sureties and had been dealing directly with the authorities of Camarines Norte in notifying the defendant to appear for trial in Quezon Province. This was a mistake on the part of the court or rather of the Clerk of Court of Quezon Province. This error may have been due to the impression of the Quezon Province Court or clerk that the sureties had already been released and so were no longer under obligation to bring the accused before it for trial. But this wrong impression was created or caused by the sureties themselves who refused to sign the notice sent to them claiming that by surrendering the defendant to the town authorities of Tagkawayan, they had already been released. Of course, this was an error. In fact, there has been a series or comedy of errors, beginning with the municipal authorities of Tagkawayan, down to the Court of Quezon Province, not excluding, the sureties themselves. When the Constabulary soldiers came to Tagkawayan with a warrant of arrest against the defendant, his sureties believing that they could release themselves by presenting him to the town authorities, brought him to the Municipal Mayor; the Municipal Mayor acknowledged delivery and in turn delivered the accused to the Justice of the Peace and the latter official, believing himself duly authorized, acknowledged delivery and turned him over to the PC soldiers, who accepted delivery and promised to bring him back if and when needed. Of course, all this was based on a misapprehension of their powers, duties and obligations, and a misconception of the law governing bail bonds and their release. But surely error or ignorance of the law, though based on good

faith, cannot serve to exonerate the sureties to a bail bond.

The law on the release of sureties is clear and definite. Rule 110, section 16 (a) provides as follows:

"SEC. 16. Discharge of sureties.—Upon application filed with the court and after due notice to the fiscal, the bail bond shall be cancelled and the sureties discharged from liability (a) where the sureties so request upon surrender of the defendant to the court; * * *"

Said section of the rule was taken from section 75 of General Orders No. 58. In interpreting said section 75, this Court in the case of *People vs. Loredo* (50 Phil., 209) said:

"In the present case it does not appear that the fiscal had been notified of the petition for the discharge of the bond, nor had the court issued an order of discharge. The mere presentation or presence of an accused in an open court is not sufficient in itself. The attention of the court must be called to his presence and the intention to surrender the body of the accused must be clearly and definitely stated and understood by the court. (6 C. J., page 243, paragraph 313). A surety who desires to produce and surrender the body of the accused in open court is not relieved from further liability upon his bond until the court accepts said surrender, and the only evidence of such act is the record of the court. (*Du Lawrence vs. State*, 31 Oh. Cir., 418.)"

It is a rule of general acceptance that the law on the release of bondsmen must be substantially complied with.

"SEC. 164. Compliance with Statutory Requisites.—The procedure required by a statute prescribing the manner in which a surrender by the sureties of their principal shall be made must be substantially followed in order to exonerate them." (6 Am. Jur., 111, 112).

"Surrender should be by unequivocal act with delivery of defendant into proper custody, and should be made in compliance with statutory regulations, if any, such as those covering notice and costs.

"* * * If the statute or rules of court provide that a surrender by bail of their principal shall be made in a certain manner, the surrender, to be effectual, should be in the manner prescribed * * *" (8 C.J.S., sec. 25d[1], page 38).

Some authorities even stand for strict compliance:

"Statutory manner in which surrender in exoneration of bail should be performed must be strictly followed." (664 Bay Ridge Ave. Corporation vs. Maresca, 263 N.Y.S. 600, 147 Misc. 232, cited in 8 C.J.S., 38 note 49).

It is evident that by their act of delivering the person of the accused to the municipal authorities of Tagkawayan, the appellants herein were not released. In the first place, they made no proper application for release. In the second place, the Provincial Fiscal was not notified. But most important of all was the fact that at that time the Justice of the Peace Court had already lost jurisdiction over the case, because it had long been sent up to the Court of First Instance, and the Provincial Fiscal had already even filed the corresponding information. At that stage, it was only the Court of First Instance of Quezon Province that could validly and competently accept delivery of the person of the accused and release the sureties, provided, of course, that the corresponding application was made and the Provincial Fiscal was notified, which were not done.

The majority opinion says that the sureties were by-passed, and were not notified to produce the defendant until 1949, and that "when the accused was still in jail the court did not insinuate to the sureties that they should go and fetch him. If it had, it is to be presumed that the sureties would have followed the indication, much as they realized the futility and senselessness of the step." This assertion not only finds no support in the record, but is even contrary to it and to the very statement of facts contained in the first part of the majority decision, which says:

"Notice of the order setting the case for arraignment for January 31 was sent on January 16 by tile Provincial Sheriff to the Chief of Police of Tagkawayan as ex-officio Deputy Sheriff for service to the bondsmen. On January 18, the Chief of Police of Tagkawayan returned the notice to the Provincial Sheriff with the information that the bondsmen 'refused to sign the subpoena because the accused Mamerto de la Cruz is held for trial at the Justice of the Peace Court of Paracale, Camarines Norte.'" (as quoted from page 3 of the majority opinion).

The majority decision says that the Camarines Norte authorities could hardly be expected to let the bondsmen have the prisoner if they had demanded his custody for the purpose of presenting him to the Court of First Instance of Quezon Province, and that the law does not require the useless or the impossible. To this I cannot agree. There is nothing to justify the belief that the Camarines Norte authorities would not give up the defendant for trial in Quezon Province. In Camarines Norte, he was accused only of theft of large cattle, the same kind of offense of which he was accused in Quezon Province. The notice sent by the Quezon Province Court to the defendant through the Camarines Norte authorities was according to the records duly served on him while in jail. If the Camarines Norte authorities were really unwilling to give him up even temporarily for trial in Quezon Province, they would have said so in the return of the service and they would not even have made the service on the defendant because in that case it would have been useless and unnecessary to notify him if said authorities would not let him go anyway. Moreover, the very Sergeant of the Constabulary who received the person of the defendant in Tagkawayan, made a solemn promise in writing that he would bring back the accused to Quezon Province whenever needed. In other words, there was already an undertaking by the authorities of Camarines Norte through a responsible peace officer that they would not only release the accused from confinement in Camarines Norte, but would even take him to Quezon Province for trial. Furthermore, it is nothing unusual for a prisoner confined in jail in one province to be taken to another province to face trial for another offense. Of course, he would have to be under guard. Even dangerous criminals finally convicted and serving sentence in the Insular Prison at Muntinlupa are sometimes sent to distant provinces even by sea to face trial there in another case, or even merely to testify. So, with more reason may one, accused of nothing more than theft of large cattle, be sent to another province to face trial on another prior charge, specially when his sureties demand his presence there.

In the present case, Quezon Province and Camarines Norte adjoin each other and their capitals are not far from each other. Had the appellant sureties complied with the notice to them on January 27 to bring the accused for trial in Quezon Province, there is no reason to believe that the Camarines Norte authorities would not have given them the custody of the accused, although perhaps under Constabulary guard. The trouble is that they made no effort or attempt in that direction, but even ignored the notice by refusing to sign it. And now they come here and blame the Court of First Instance of Quezon Province for holding them accountable for their failure to comply with the terms of their undertaking.

Again, the majority says: "Unversed in the manners of court and law, the appellants may not have followed the prescribed procedure to the letter, but they tried with all the diligence at their command to live up to their commitment the best they knew how * * *." I am afraid this assertion not only finds no support in the record of the case, but actually runs counter to it, because said record reveals that far from trying with all the diligence at their command to live up to their commitment, they not only neglected to live up to said commitment, but they actually refused to do so, in spite of the notice given them by the court in January, 1947, before the accused had escaped. And as to their ignorance of manners of court and law, there is the universal principle that ignorance of the law excuses no one.

The majority opinion itself states that a bail bond is a contract between the Government and the surety. I agree. But surely, a person who assumes the role of surety and contracts with the Government should before doing so

apprise himself of the meaning and consequences of the contract into which he is entering. He cannot and should not do it blindly and in blissful ignorance and later ask and expect the courts to protect him from the consequences of his own ignorance, neglect or folly. And the Government has reason to assume that said person offering to be a bondsman is responsible and knows what he is doing. When a person who commits a crime is arrested, the Government is unreservedly willing to keep him safely in custody and even give him food and shelter meanwhile, so as to secure his appearance in court for trial and decision. And when the surety comes to court and offers himself to assume the role of jailer and solemnly promises to produce the person of the accused in court whenever needed or else forfeits the amount of his bond, he knowingly assumes a serious and solemn, undertaking from which he cannot easily extricate himself, to the prejudice of the Government, the speedy administration of justice and the conviction and punishment of the accused if found guilty.

Finally, the majority opinion says that the Government through the court, in leading the appellants into believing that what they had done was enough and that their connection with the case had been terminated, may really be considered as estopped by laches. In the first place, the court's erroneous impression at the beginning that the appellants were no longer liable under the bail bond and so by-passed them and dealt directly with the authorities of Camarines Norte, was induced by the very act of said appellants in making the court believe that they had already been released as sureties by their act of delivering the accused to the municipal authorities of Tagkawayan. Surely, this mutual error, even assuming the act of the clerk of court in later sending the notice of hearing to the authorities of Camarines Norte, to be the act of the court itself, cannot serve to release appellants, in violation of the express provision of the law. To secure exoneration as sureties, the law provides, a procedure which must be substantially followed. In the second place, the general rule is that the Government may be held guilty of equitable estoppel only when acting in its proprietary capacity. It cannot be so held when it acts in its governmental capacity, as the Government acted in the present case.

"An equitable estoppel ordinarily may not be invoked against a government or public agency functioning in its governmental capacity; but where the elements of an estoppel are present it may be asserted against the government when acting in its proprietary capacity." (31 C. J. S., 403.)

In view of the foregoing, I dissent.

Appellants discharged as sureties for Mamerto de la Cruz.

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