

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. NEMESIO BONOAN ET AL. (BONDSMEN OF SIMEON MANDAC IN CASE NO. 6243), DEFENDANTS AND APPELLANTS.**

*G.R. No. 6741. February 21, 1912*

Ponente: TRENT, J.

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**TRENT, J.:**

The fiscal for the Province of Ilocos Norte filed an information in the Court of First Instance of that province on April 7, 1910, charging Simeon Mandac with the crime of homicide. Mandac was arrested and the court fixed the amount of the bail to be given at P10,000. On the 21st of that month, the appellants, Nemesio Bonoan, Evaristo G, Clemente, Septimo Villanueva, and Ignacio Arzaga, entered into a recognizance or bond to the United States in that sum, conditioned that "the above-named defendant, Simeon Mandac, will appear and answer the charge above mentioned in whatever court it may be tried, and that he will at all times hold himself amenable to the orders and processes of the court, and if convicted will appear for judgment and render himself to the execution and satisfaction thereof, and in case of failure to perform any of these conditions that we will pay to the United States the sum of ten thousand pesos Philippine currency." Mandac was thereupon released from custody.

The case proceeded to trial and resulted in the defendant being found guilty of the crime charged and sentenced accordingly. From this judgment an appeal was taken to the Supreme Court. This court issued the following order on August 18, 1910:

"Upon presentation by the Attorney-General in case No. 6243 against Simeon Mandac for the crime of homicide of a petition requesting that the appeal be held to be abandoned and the sentence declared final and that the case be returned to the Court of First Instance for execution of the sentence, the court duly stated: In view of the fact that the regulation period for the presentation of appellant's brief has more than elapsed without presentation thereof and that according to the investigation made the accused is apparently beyond the jurisdiction of this court, his present whereabouts Being absolutely unknown, all of which demonstrates his purpose of hiding himself and of abandoning his appeal, the petition of the public prosecutor is granted, the appeal entered by the accused declared abandoned, with costs, and the judgment appealed from to be final, and that the case be forthwith remanded to the court of origin for execution of the judgment."

The record was returned to the lower court as directed and that court issued an order on September 3 (Saturday), 1910, directing the appellants to present at once their principal, Mandac, for the purpose of commencing to serve the sentence imposed upon him. On Monday, September 5, the appellants appeared and stated in writing that they were unable to present the said Mandac in so short a time. On the same day, September 5, an order forfeiting the bond was entered and the appellants given thirty days within which to give a satisfactory explanation of why their principal had failed to appear. On the 15th of that month the appellants asked for an extension of time, which was denied on the 23d; and they then filed a document setting forth at some length the reasons why they had been unable to present the said Mandac as directed. These reasons were considered insufficient, and final judgment was entered on October, 31, and the provincial fiscal directed to proceed against sufficient of the property of these

bondsmen to satisfy the amount of said bond. From this order or judgment the bondsmen appealed.

Counsel now insists that the appellants should be relieved of all responsibility in this case for two reasons: First, because a new bond in the sum of P10,000 was substituted in lieu of the original bond; and second, for the reason that when they, the appellants, were called upon on September 3 to present the body of their principal, he was then held by the authorities in the Province of Nueva Vizcaya on a charge of bandolerismo, and that said authorities refused to give him up.

With reference to the first proposition, it is sufficient to say that the alleged bond which the appellants claim was substituted in place of the one signed by them never was accepted or approved by the court. Bondsmen can not be relieved by merely presenting or causing to be presented an alleged bond which has never been approved. Such a document has no place in the record.

The second question is not so easily disposed of. It is admitted by all parties that at the very time when the lower court issued the order of September 3 directing the bondsmen to present in court without delay the body of the said Mandac, he was then legally held by the Government in the Province of Nueva Vizcaya on a charge of bandolerismo; that the said authorities refused to turn him over to the appellant bondsmen for the purpose of presenting him to the Court of First Instance of Ilocos Norte; and that the first time these appellants had ever been called upon by the court to present the said Mandac was on September 8, 1910.

The United States, the plaintiff in the homicide case against Mandac, was the obligee in the bond. The same plaintiff and obliged caused the arrest and confinement of Mandac in Nueva Vizcaya on a charge of bandolerismo and refused to deliver him up to the appellants. 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. 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.*, 76 U. S., 13, citing *Rathbone vs. Warren*, 10 Johns., 586; *Niblo vs. Clark*, 3 Wend., 24; *S. C.*, on error, 6 Wend., 236; *Bowmaker vs. Moore*, 7 Price, 223; *S. C.*, 3 Price, 214.)

"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 the law." (*Taylor vs. Taintor*, 83 U. S., 366.)

The Government had a perfect right to arrest and hold Mandac in the Province of Nueva Vizcaya on that charge of bandolerismo. It also had the right to decline to surrender him to these appellants. But it can not 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.

It is said that the conditions of the bond were violated prior to the time that the principal Mandac was rearrested. This contention is based upon the conduct of the said Mandac from about the 24th of June, 1910, up until September 1, 1910, the day of his rearrest. The facts upon this point are these: Mandac came to Manila on or about May 29, 1910, and remained until about June 24, 1910, when he disappeared. His bondsmen, who were residents of Ilocos Norte, became alarmed about their principal's remaining in Manila so long, so one of them came to this city prepared to arrest or cause the arrest of the said Mandac. When he arrived Mandac could not be found. The next time Mandac was heard of he was in one of the northern provinces organizing a band of outlaws. He succeeded in perfecting to some extent this organization, and he and his band committed various depredations, including the robbing of a municipal treasury, the carrying away of certain animals and other property of private individuals, and the kidnaping of a number of priests. He caused so much disturbance in the northern provinces

that the Government was forced to and did send out a large force of the Philippine Constabulary to arrest or destroy this band. These quasi military operations cost the Government large sums of money. The band was finally broken up and a number of its members captured, including the leader, Mandac. It was for these depredations that Mandac was held in confinement and finally tried by the Court of First Instance of Nueva Vizcaya. The bondsmen assisted in every way they possibly could in the capture of Mandac. Do these facts constitute a breach of that condition of the bond wherein it is stated that "he (Mandac) will at all times hold himself amenable to the orders and processes of the court?"

Let it be said that if the bondsmen had been called upon by the court at any time between the latter part of June and the first of September to present their principal that they could not have done so. (We cannot tell from the record whether, as a matter of fact, they could have done so or not.) This being true, would they be liable on the bond under the condition that they obligated themselves to see that their principal would at all times hold himself amenable to the orders and processes of the court, when they had not been called upon by the court to present their principal? In other words, when is the liability of the bail fixed?

The form of the bond in this case is in accordance with the provisions of section 67, General Orders, No. 58. Section 76, *ibid.*, reads:

"SEC. 76. If without sufficient cause the defendant neglects to appear for arraignment, trial or judgment, or neglects to appear on any other occasion when his presence may be required in court, or fails to surrender himself in execution of the judgment, the court must direct the fact of his neglect or failure to be entered in the records of the cause, and declare the undertaking or deposit, as the case may be, to be forfeited. But if at any time within thirty days thereafter the defendant or his counsel appears and satisfactorily explains the neglect or failure, the court may direct the forfeiture to be discharged upon such terms as it may consider just. If the forfeiture is not so discharged, the promotor fiscal shall at once proceed by action against the bail upon their undertaking."

From the reading of this section it will be seen that certain things must be done before execution can issue to satisfy the amount of the bond: First, if the defendant fails or neglects to appear on any occasion when his presence may be required by the court, or fails to surrender himself in execution of the judgment, an order forfeiting the bond or the deposit must be entered; second, the court shall then notify the bondsmen and give them thirty days within which to present the body of their principal; third, if the bondsmen do not present the defendant within that time and do not satisfactorily explain the reasons therefor, the court must then render judgment against the bondsmen for the amount represented in the bond. In other words, no judgment can be rendered against the bondsmen until they have been given a hearing, and they are not required to present their principal until called upon to do so by the court. A final judgment against the bondsmen cannot be entered unless such judgment is preceded by an order of forfeiture and an opportunity given to the bondsmen to present their principal or to give a satisfactory reason for their inability to do so. The conditions of the bond are not that the principal will conduct himself during the pendency of the action as a law-abiding citizen or as a Christian gentleman, but that he will appear and answer the charge against him and that he will hold himself amenable to the orders and processes of the court, and, if convicted, will appear for judgment and render himself to the execution and satisfaction thereof. These are the conditions undertaken and entered into by the appellants' in this case. They did not guarantee that Mandac would commit no crime while he was at liberty. It is true that by the bond Mandac was, in the theory of the law, committed to the custody of his sureties as jailers of his own choosing. Not that he was, in point of fact, subjected or could be subjected to constant imprisonment by them; but he was so far placed in their power that they could have arrested him at any time and surrendered him to the court. The rights and liabilities of sureties on a recognizance or bail bond are, in many respects, different from those of sureties on ordinary bonds or commercial contracts. The former can discharge themselves from liability by surrendering their principal; the

latter, as a general rule, can only be released by payment of the debt or performance of the act stipulated. But in respect to the limitations of their liability to the precise terms of their contract, and the manner of determining whether or not they have complied with those terms, their positions are similar. In both instances, the party charged with having violated the terms of the obligation must be given an opportunity to comply with those terms before he can be held liable.

In the order of this court of August 18, 1910, above copied, Mandac's appeal was declared deserted and it was dismissed, not upon the ground that he had absconded, but upon the ground that he had failed to present his brief within the time required by the rules of this court. It is true that this court said in that order that according to the documents in the case it appeared that the defendant was beyond the jurisdiction of this court, his whereabouts being entirely unknown. This statement was made, not for the purpose of showing that Mandac had violated the conditions of the bond, but for the purpose of showing that he had deserted his appeal. This could not be held to mean a declaration that the conditions of the bond had been violated, because the bondsmen were given no hearing upon the question at that time; and furthermore, the presence of Mandac in this court was not necessary in order that his appeal might be heard and judgment rendered; nor did the sureties on his bail bond guarantee that he would be present in this court either before the hearing or after the hearing. (U. S. vs. Lewis, 2 Phil. Rep., 193.)

In the case of Bando vs. Judge of First Instance (14 Phil. Rep., 620) this court, speaking of the obligations imposed upon a defendant and his bondsmen when the former is released from custody during the pendency of the action by virtue of a bond, said:

"The only obligation imposed upon the defendant, under the provisions of the law when he is granted his liberty during the pendency of the cause of action against him, is that he will deliver himself to the custody of the court whenever he is called upon so to do, for the purpose of receiving the orders and processes of the court. The obligation imposed upon the bondsmen can not be greater nor of a different character. To permit the imposition of other obligations upon the defendant in criminal actions and upon his bondsmen, for the purpose of securing his liberty under bail, than those provided for by law might result in the imposition of conditions which would absolutely prevent and render it impossible for the defendant to secure his liberty during the trial, notwithstanding the fact that he is entitled to his liberty, as a matter of right."

Again, the bail bond is a contract between the appellants and the Government, that, if the latter would release Mandac from custody, the former would and did undertake that "he will at all times hold himself amenable to the orders and processes of the court." Not that he would hold himself amenable to the orders and processes of any other entity or person. Amenable is to be liable to answer; responsible; answerable; liable to be called to an account, by the court. There must necessarily be a call before an answer, and an order before it can be obeyed. None were given by the court prior to September 3d, and the appellants cannot be held liable for the failure of their principal to answer or comply with the process or orders when none were given.

For the foregoing reasons, we agree with the Attorney-General that the order appealed from should be reversed and the appellants relieved of all liability, without costs. So ordered.

Arellano, C. J., Torres, Mapa, and Moreland, JJ., concur.

Johnson and Carson, JJ., dissent.

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