

ISMAEL HUBAHIB, PLAINTIFF AND APPELLANT, VS. INSULAR DRUG CO., INC., ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 43549. February 19, 1937*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-43549/>**DIAZ, J.:**

This case was commenced in Branch II of the Court of First Instance of Cebu by Ismael Hubahib, for the annulment of the writ of execution issued against him as surety, for failure of the principal obligor, Silvestre Mabutas, to satisfy the amount of the judgment in civil case No. 8246, entitled "Insular Drug Co., Inc., plaintiff, vs. Silvestre Mabutas, defendant" which was tried and decided in Branch III of said court and wherein Mabutas was ordered to pay to the Insular Drug Co., Inc., the sum of P1,192.01 with interest thereon at 12 per cent per annum from January, 1930, until fully paid, plus a sum equivalent to 6 per cent thereof as attorney's fees, with costs.

The lower court decided the case adversely to the plaintiff who appealed from said judgment alleging that the court committed the following errors:

"I. In not declaring null and void the order issued on or about May 13, 1933, in civil case No. 8246 of the Court of First Instance of Cebu (Exhibit G), directing the issuance of a writ of execution against Pedro Villasis and Ismael Hubahib (the appellant herein), as sureties for the dissolution of a preliminary attachment in said case, which order was issued ex parte, upon a motion of which said sureties had not been notified, and behind their back, and without having determined the liability of the sureties or the value of the property the attachment of which had been dissolved by means of the bond filed by them.

"II. In not declaring null and void the writ of execution issued by the clerk of the Court of First Instance of Cebu by virtue of the order stated in the first assignment of error, dated May 13, 1933, in said civil case No. 8246, as well as the actuations of the defendant sheriff in proceeding to comply with said writ.

"III. In dismissing the complaint in question and in not ordering the defendant Insular Drug Co., Inc., to pay the costs,

"IV. In denying the motion for a new trial filed by the appellant."

The pertinent facts that should be taken into consideration in order to decide the questions raised by the appellant by means of the four alleged errors assigned in his brief, may be summarized as follows:

Upon the commencement of case No. 8246 for the recovery of a certain sum of money, the plaintiff therein, Insular Drug Co., Inc., asked for and obtained the issuance of a writ of preliminary attachment against the defendant Silvestre Mabutas by Branch III of the court, which was the one that tried the case. Before the sheriff of Cebu could execute the writ in question, Mabutas filed a bond in accordance with the provisions of section 428 of Act No. 190, which permit the dissolution of the writ, under the circumstances, upon the giving of sufficient security approved by the court. This took place on May 16, 1930. The bond in question, which was in the sum of P2,500, was subscribed by the herein appellant, Emilio A. Bastinen and Silvestre Mabutas, with the appellant and Bastinen as sureties, and Mabutas as the principal obligor, the three binding themselves jointly and severally to

answer, in its case, for the sum in question. As the surety Bastinen had withdrawn from the bond, another had to be executed in November, 1930, by Mabutas, the same appellant Ismael Hubahib and Pedro Villasis, the latter as a new surety in lieu of Bastinen. As in the case of the first bond, the three bound themselves jointly and severally to answer, in its case, for the payment of the amount of the new bond which was also P2,500. Sometime later, that is on December 1, 1932, judgment was rendered against Mabutas, the court ordering him therein to pay to the Insular Drug Co., Inc., the sum of P1,192.01 with interest thereon at 12 per cent per annum, plus a sum equivalent to 6 per cent thereof as attorney's fees, and costs. When the judgment became final the lower court, upon an ex parte petition, issued the writ of execution of April 17, 1933, but as Mabutas was insolvent, the judgment could not be satisfied. About one month later, that is, on May 13, 1933, upon an ex parte petition of the Insular Drug Co., Inc., the lower court, through the judge of Branch III, issued a writ of execution of the judgment on the bond of the herein appellant and Pedro Villasis. When the appellant was informed of said writ of execution, he filed a motion on December 29, 1933, praying that his bond be declared null and void on the ground that no attachment had in fact been levied on the properties of Mabutas; that no inventory had been made of the attached properties of said defendant and he, as well as his cosurety, had never been required to deliver to the court the defendant's attached properties; and that the net amount for which they were liable as sureties had not yet been determined.

The lower court, also through the judge of its Branch III, deciding said motion of the appellant, denied it in its order of September 25, 1934, declaring it to be without merit and unjustified. The appellant, who could have appealed from said order, failed to do so then and thereafter. The fact that Ismael Hubahib failed to appeal from the order of the lower court issued in said case No. 8246, denying his motion of December 29, 1933, which was appealable by nature, now bars him from the right to raise for the second time the same question whether or not the judgment rendered against Mabutas may be executed on the bond filed by him and Pedro Villasis in favor of said defendant. Said order having become final, it necessarily has the authority and effect of *res judicata* and it is of no avail for the appellant to allege now that said order was issued behind his back because, if it had such defect, the defect was cured when said appellant appeared before the judge of said Branch III by his motion of December 29, 1933, to be heard and to ask that order under consideration be reconsidered and set aside. It has already been stated that although the appellant could have appealed from said order during the period allowed him by law for said purpose, he failed to do so. Said failure on his part naturally gave rise to the inference that he abided by and respected it.

While it is true that before the order in question was issued by the judge of Branch III of the lower court, the appellant had instituted the action referred to in this case in Branch II of said court, for the annulment of the order which gave rise thereto, or that of May 13, 1933, obtained ex parte by the Insular Drug Co., Inc., by virtue of which the judge presiding over Branch III issued said writ of execution against Mabutas on the bond filed by the herein appellant and Pedro Villasis, and obtained therein a writ of preliminary injunction against the defendant sheriff restraining him from complying with the writ of execution in question, the institution of said action was not only improper but also absolutely unjustified, on the ground that the appellant had the remedy of applying to the same Branch III of the lower court, which issued the orders in question, for reconsideration thereof, in accordance with the provisions of section 113 of Act No. 190, or of appealing from said orders or from that denying his motion in case such order has been issued. The various branches of a Court of First Instance of a province or city, having as they have the same or equal authority and exercising as they do concurrent and coordinate jurisdiction, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders of judgments, by means of injunction (*Cabigao and Izquierdol's. Del Rosafio and Lim* [1922], 44 Phil., 182, and the cases cited therein; *Nunez vs. Low* [1911], 19 Phil., 244; *Orais vs. Escario* [1909], 14 Phil., 208, 212). After an appealable order or judgment has become final, it can no longer be altered and it is of public interest that it be so because otherwise there would be no way of knowing when the litigants can exercise their

rights recognized by the orders and judgments rendered in their favor nor when the action in which they are involved could be considered terminated.

Having arrived at the conclusion that the orders, the annulment of which is asked by the appellant are already final and executory, and the authority or jurisdiction of the court that issued them not being questioned, it appears unnecessary to pass upon the other alleged errors assigned by the appellant in his brief, particularly if it is considered that the bond tiled by him is not that provided in section 440, as claimed by him, but that stated in section 428 of Act No. 190.

The judgment appealed from is affirmed, with the costs to the appellant. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

Judgment affirmed

RESOLUTION ON MOTION FOR RECONSIDERATION

March 11, 1937

DIAZ, J.:

The motion for reconsideration filed in this case by the appellant is based upon the assumption that the lower court was without authority or jurisdiction to order the execution of the judgment rendered in civil case No. 8246, on the bond given by him in favor of the defendant therein. The court undoubtedly had jurisdiction to do so because the question raised and decided in said case—the recovery of the sum of P1,192.01 plus interest thereon and the costs—referred to an action which by reason of the amount involved, necessarily came within the jurisdiction of said court (sec. 56, No. 3, Act No. 136); and by jurisdiction is meant the power or authority of a court to hear and determine a case, or to conduct proceedings in a particular case until the final determination thereof, the existence of said authority never depending upon the more or less regular or correct exercise thereof (Herrera vs. Barretto and Joaquin, 25 Phil., 245).

No attempt has been made to show to this court, nor can it be inferred from the record, that the lower court did not have such authority. The only thing alleged by the appellant in his brief, which he now repeats in his motion for reconsideration, is that as said court issued the writ of execution in question behind his back, it is null and void. He contends that the validity of said writ depended upon the authority of said court to issue it by virtue of the previous filing of a motion to that effect by the appellee with notice to the appellant. This argument is not new. It had already been adduced by the appellant in his brief and was discussed in the decision, it having been stated therein that if the court erred in favorably deciding the appellee's motion for the issuance of a writ of execution of the judgment against Silvestre Mabutas on the bond filed by the appellant, without previous notice to the latter of the steps that were to be taken against him, such error was cured by his appearance in the case wherein the writ or order was issued to ask that said order be set aside. Furthermore, having failed to appeal from said order although he could have done so then, it is now too late to attempt to set it aside by means of another proceeding.

It being clear to this court, for the foregoing reasons, that the appellant's motion for reconsideration is without merit, it is hereby denied. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.