

ISIDEO TAN (ALIAS TAN LIT), PETITIONER, VS. FRANCISCO ZANDUETA, JUDGE OF FIRST INSTANCE OF MANILA, AND TIU CHAY (ALIAS TAN KIA), RESPONDENTS.

G.R. No. 43721. June 15, 1935

Ponente: DIAZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-43721/>

DIAZ, J.:

This case is intimately related to the habeas corpus case, G. R. No. 43772 (page 530, post), instituted by the same petitioner against the same respondents, and considered and decided on the same day.

The respondent Tiu Chay (alias Tan Kia) sued the petitioner Isidro Tan (alias Tan Lit) in civil case No. 47826 of the Court of First Instance of Manila, to recover from him the amount of P22,500 which he alleged to be the half corresponding to him of the P45,000 which they won as a prize in the last drawing of the sweepstakes with ticket No. 228619 which they purchased with a part of the capital invested in a sari-sari store. Simultaneously with his complaint, said Tiu Chay (alias Tan Kia) asked and obtained from the respondent judge the attachment of the property of the petitioner.

Isidro Tan (alias Tan Lit) upon filing a bond in the amount of P5,000. Isidro Tan (alias Tan Lit) succeeded in dissolving the attachment by filing, in turn, a counter bond in the same amount as that filed by Tiu Chay (alias Tan Kia) to secure said attachment; and as soon as he obtained the order to that effect and filed the required counter bond on April 20, 1935, he withdrew from the Philippine National Bank his deposit in the amount of P23,500 the greater part of which was attached days before pursuant to the order of the respondent judge dated February 26, 1935. Three days after petitioner's withdrawal of the aforesaid amount from the Philippine National Bank, the respondent Tiu Chay (alias Tan Kia) asked and obtained an order from the respondent judge requiring the petitioner to file an additional counter bond at first for P10,000, later P15,000 in lieu of P10,000, and still later P17,000, subsequently reduced to P12,000.

When the time given the petitioner by the respondent judge to file said counter bond or to deposit in the Philippine National Bank the amount of P12,000 of the P23,500 which he withdrew therefrom, expired without having done either the one or the other, he was required to appear before the respondent judge and show cause, if any, why he should not be found in contempt of court for disobeying an order given him to that effect. And inasmuch as the explanations given by him were not deemed satisfactory by the respondent judge, the latter declared him guilty of contempt and immediately ordered his confinement, clearly advising him that he would continue so confined until he puts up the said counter bond of P12,000 or deposits the same amount in the bank.

From its allegations, we gather that the petition of Isidro Tan (alias Tan Lit) is based upon the following grounds: (1) That the writ of preliminary attachment issued by the respondent judge at the instance of Tiu Chay (alias Tan Kia) was irregular and illegal, and (2) that the order of the respondent judge directing the confinement of the petitioner until he complies with the order requiring him to file a counter bond in the amount of P12,000 or to deposit the identical amount in the bank, is likewise illegal because it is a sequel to another, also illegal, which

directed the attachment of his property.

As to the first ground, we find that the writ of preliminary attachment was issued in strict conformity to the law, because the complaint wherein the said attachment was issued alleged that the petitioner, after collecting the prize of a ticket in the last sweepstakes, consisting of the amount of P50,000, belonging to the two, that is the petitioner and the respondent Tiu Chay (alias Tan Kia), appropriated the entire prize exclusively for himself, in complete disregard of said Tiu Chay (alias Tan Kia), knowing that one-half thereof did not belong to him but to said respondent; that he was merely a depository or agent of the latter as to said half, and that the petitioner acted in the manner stated notwithstanding the fact that he was required to turn over to the respondent the part of the prize won corresponding to the latter. The allegations to this effect are found in paragraphs 6, 7, 8, and 9 of the complaint of said Tiu Chay (alias Tan Kia).

Petitioner's contention that, in view of his motion to dissolve the writ of preliminary attachment, on the ground that the allegations of the complaint of the respondent Tiu Chay (alias Tan Kia) were not true, said attachment should have been dissolved without any condition, is without force, because the respondent judge had discretionary power, according to section 441 of Act No. 190, to dissolve or to leave in force the said attachment, and it was precisely in the exercise of this power, after hearing the parties, as may be deduced from the orders issued and now of record, that he decided to dissolve the attachment but conditioned on petitioner's filing a counter bond for P5,000; and this was voluntarily done by the petitioner, thereby enabling him to withdraw, as in fact he did withdraw, the amount he had on deposit in the Philippine National Bank which was a part of the money won in the last sweepstakes. On this sole ground, therefore, the writ of certiorari will not lie.

As to the second ground, we understand that the adequate remedy is not certiorari but habeas corpus, and the petitioner himself, learning of this afterwards, instituted *motu proprio* a habeas corpus proceeding herein mentioned in the beginning.

In view of the facts and considerations above set forth, we are of the opinion, and so hold, that the proceeding instituted is without merit, especially after the habeas corpus commenced by the same petitioner has been favorably acted upon, without special finding as to the costs. So ordered.

Avanceña, C.J., Hull, Vickers, and Goddard, JJ., concur.

Petition denied.

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.