

ISIDRO TAN (ALIAS TAN LIT), PETITIONER, VS. FRANCISCO ZANDUETA, JUDGE OF FIRST INSTANCE OF MANILA, THE DIRECTOR OF PRISONS AND TIU CHAY (ALIAS TAN KIA), RESPONDENTS.*G.R. No. 43772. June 15, 1935*

Ponente: DIAZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-43772/>**DIAZ, J.:**

Isidro Tan (alias Tan Lit), who is at present confined in Bilibid Prison, prays that he be released from confinement alleging that he is deprived of his liberty by virtue of an illegal order entered in civil case No. 47826 of the Court of First Instance of Manila, by the respondent judge, Francisco Zandueta. The order referred to was issued by the said respondent on May 17, 1935, the dispositive part of which reads:

"The court finds the defendant in contempt of court and orders that, pending the deposit by him of the amount of P12,000 above-mentioned in the order of May 6, 1935, or the filing of a bond in the aforesaid amount, he will not be released."

The facts alleged in the pleadings may be briefly stated as follows: In case No. 47826 of the Court of First Instance of Manila, the respondent Tiu Chay (alias Tan Kia), as plaintiff, obtained a writ of preliminary attachment against the petitioner Isidro Tan (alias Tan Lit) upon the filing of a bond in the amount of P5,000. The respondent judge issued said writ on February 26, 1935, authorizing the attachment of the properties of the defendant Isidro Tan (alias Tan Lit) to the amount of P22,500. Upon motion of said defendant, the respondent judge issued an order on April 1, 1935, lifting the writ of attachment conditioned on the filing of a counter bond in the amount of P5,000. After sundry proceedings brought about by a motion of reconsideration presented by the defendant, asking that the writ referred to be lifted, the respondent judge issued another order, dated April 20, confirmatory of that of the 1st of said month, by virtue of which the defendant put up the required counter bond, and immediately thereafter, that is, on the same day, April 20, 1935, withdrew from the Philippine National Bank an amount of money of which P22,000 had been attached under the aforesaid order of February 26, 1935. On the third day, that is, on April 23, 1935, the respondent Tiu Chay (alias Tan Kia) asked that Isidro Tan (alias Tan Lit) be required to put up another counter bond in the amount of P22,500 instead of P5,000 already filed. The respondent judge, passing on said motion, ordered Isidro Tan (alias Tan Lit), on May 2, 1935, to file an additional counter bond in the amount of P10,000 only, giving him ten days to do so. Four days thereafter, that is, on May 6, 1935, the respondent judge entered another order requiring Isidro Tan (alias Tan Lit), to put up a counter bond of P17,000 instead of P15,000, or in default thereof, to deposit anew in the Philippine National Bank P17,000 of the amount withdrawn therefrom days before. For failure to file either the counter bond in the amount of P10,000 or that in the amount of P17,000 to which it was later raised, the respondent judge required Isidro Tan (alias Tan Lit) to appear before him and show cause, if any, why he should not be punished for contempt of court. Believing, however, that Isidro Tan (alias Tan Lit) was not given sufficient time to comply with the orders of May 2 and 6, 1935, the respondent judge granted him another day to comply therewith, but reducing this time the counter bond required of him to P12,000 only, with an option to deposit in the bank said amount in case of failure to put up the

counter bond as reduced. As the petitioner, notwithstanding these facilities, neither filed any additional counter bond nor made the deposit required of him, the respondent judge ordered his arrest on May 17, 1935, and on the same day, after hearing his explanations which the said judge considered unsatisfactory, he was sent to jail there to remain until he should deposit the amount required of him or file the aforementioned counter bond.

The petitioner argues that under the provisions of section 440 of Act No. 190, after filing the counter bond of P5,000 required of him by the court in its order of April 20, 1935, he was authorized and had a perfect right to withdraw from the Philippine National Bank the amount of his deposit which was attached by virtue of the orders of February 26 and April 20, 1935. In truth, when he withdrew the aforesaid amount, there was still no order preventing or restraining him from doing so, and requiring him to file an additional counter bond, because the order which imposed upon him that obligation was issued very much later, that is, on May 2, 1935, or twelve days after the said withdrawal.

A reading of the aforesaid section of law readily shows, that when the property released from an attachment cannot be returned by the party who secured its release upon the filing of a bond, the bond takes the place of said property, that is, answers therefor, because the law on the point is couched in the following language: "the obligation aforesaid standing in place of the property so released."

Moreover, the provision of said section, to the effect that the defendant and surety will, on demand, pay to the plaintiff the full value of the property released, proceeds on the assumption that a judgment has been rendered in favor of the plaintiff; and the case at bar, in connection with the present status of case No. 47826 of the Court of First Instance of Manila, is not such as to fall under said provision of law, because up to the present no judgment has been rendered against the defendant, that is, the petitioner Isidro Tan (alias Tan Lit), the question of whether or not the respondent Tiu Chay (alias Tan Kia) is entitled to the amount claimed by him as plaintiff in the said case, being still pending resolution.

Respondents' contention that the respondent judge proceeded according to law in requiring an additional counter bond of P12,000 and in later ordering the confinement of the petitioner pending the filing of said bond or the deposit of an equal amount with the bank, because he had not lost jurisdiction over the property released pursuant to the provisions of section 440 of Act No. 190, is not only without merit but also untenable. From the moment the said respondent authorized the petitioner to put up the counter bond of P5,000 and from the moment the said petitioner filed said counter bond in order to be able to withdraw his deposit in the Philippine National Bank, it can be said that the respondent lost jurisdiction over the said property, although he retained jurisdiction to resolve the principal question whether or not the respondent Tiu Chay (alias Tan Kia) was entitled to the relief prayed for in his complaint, because he permitted and the law likewise permits that the counter bond of the petitioner stand and answer for the said property.

In view of the foregoing, we are of the opinion, and so hold, that the petitioner is in fact deprived of his liberty by virtue of an illegal order; wherefore, we order his immediate release, with the costs taxed against the respondent Tiu Chay (alias Tan Kia). So ordered.

Hull, Vickers, and Goddard, JJ., concur.

Avanceña, C. J., I concur in the dispositive part.

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.