

**JOSE S. TIAOQUI AND SALVADOR E. IMPERIAL, PETITIONERS, VS.
ANTONIO HORRILLEN, JUDGE OF FIRST INSTANCE OF MANILA,
CHINA INSURANCE & SURETY CO., INC., AND JOSE CASIMIRO,
RESPONDE...**

G. R. No. 44878. March 31, 1936

Ponente: RECTO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-44878/>

RECTO, J.:

This is a petition for a writ of certiorari filed by Jose S. Tiaoqui and Salvador E. Imperial against the Honorable Antonio Horrilleno, Judge of First Instance of Manila, Jose Casimiro, sheriff of the City of Manila, and China Insurance & Surety Co., Inc., a corporation duly organized and registered under the laws of the Philippines.

It appears that in civil case No. 45807 of the Court of First Instance of Manila, entitled, "China Insurance & Surety Co., Inc. vs. Adelina Lim Tuaco and Agustin Vergel de Dios," there was issued, at the instance of the plaintiff, a writ of execution against the defendants by virtue of which Jose Casimiro, sheriff of the City of Manila, levied upon the amount of P8,390.21 due the defendants from one Ong Che as purchase price of certain properties, said amount remaining in the custody of the sheriff; that Jose S. Tiaoqui filed a complaint in which Salvador E. Imperial later intervened (civil case No. 46389 of the Court of First Instance of Manila), wherein both the plaintiff and the intervenor alleged that they had a lien over the 8,390.21 levied upon by the sheriff of Manila, the first up to the amount of P2,567.33 and the second up to the amount of P6,000, and both asked that judgment be rendered in their favor and against the China Insurance & Surety Co., Inc., for the payment of said sums, respectively, with interest and costs; that upon petition of the plaintiff and the intervenor in said civil case No. 46389, writs of injunction were issued by the court restraining the sheriff of the City of Manila from delivering to the China Insurance & Surety Co., Inc., the aforesaid sum of P8,390.21 in his possession until further order; that a judgment was rendered in the said civil case No. 46389 in favor of the plaintiff Tiaoqui and the intervenor Imperial in accordance with their respective claims, and an appeal having been taken therefrom, the court required the defendant, China Insurance & Surety Co., Inc., to put up a bond in the amount of P9,390.21 in order to suspend the execution of the said judgment pending appeal; that the appeal bond referred to having been filed, the respondent judge, upon petition of the China Insurance & Surety Co., Inc., and against the objection of Jose S. Tiaoqui and Salvador E. Imperial, ordered, after the corresponding trial, the lifting of the injunctions issued as aforesaid, for the reasons, among others, set forth in the following order of the respondent judge of November 5, 1935:

"The question, therefore, presented to the court is whether in this state of the case, the injunction issued by the court against the defendants may or may not be lifted. For a better understanding and resolution of this question, it should be recalled that the injunction issued herein had for its purpose to prohibit the sheriff of Manila from delivering to the defendant China Insurance Co., in execution of a judgment in favor of the latter and against Adelina Limtuaco, one of the defendants, the amount of money above-mentioned which said officer had and still has in his possession, which amount of money had been levied upon from Adelina

Limtuaco by the sheriff under the aforesaid judgment in a case" wherein the defendant China Insurance Co. was the plaintiff and Adelina Limtuaco and her husband were the defendants. We have said that the defendant China Insurance, to prevent the execution of the judgment rendered in this case against it, filed a bond in favor of the plaintiff and the intervenor in the amount of P9,390.21 to guarantee and secure the rights of the plaintiff and the intervenor in the event the said judgment is affirmed by our Honorable Supreme Court. With the filing of this bond the money in the hands of the sheriff, which is the subject matter of this case, may now disappear without affecting the rights of the plaintiff and the intervenor who are secured by the bond filed by the defendant China Insurance Co. The continuation, therefore, of the injunction the dissolution of which is asked, is of no avail, answers no purpose, and does not protect better the rights of the plaintiff and of the intervenor. This being so, and considering further that the right to the issuance of a preliminary injunction is not a right *ex debito justitiae* but an equitable remedy whose issuance, continuation, or dissolution rests on the sound discretion of the courts, which, at any stage of the case and while they retain jurisdiction, are authorized to issue or dissolve the injunction, we find no principle of equity or of justice which, under the circumstances in which the dissolution of the injunction issued herein is asked, is at war with the order dissolving the same."

Jose S. Tiaoqui and Salvador E. Imperial have filed the instant petition asking that we declare the order of November 5, 1935, null and void, alleging that the respondent judge exceeded his powers to the prejudice of the petitioners in issuing the said order lifting the injunctions without requiring the China Insurance & Surety Co., Inc., to file a bond as provided in section 169 of the Code of Civil Procedure. The respondents have answered the petition denying that the respondent judge exceeded his jurisdiction or abused his powers, and asking that the petition be denied.

The provisions of section 169 of the Code of Civil Procedure, relied upon by the petitioners, refer solely to a case where the petition to lift a preliminary injunction is filed at any time before trial, and have, therefore, no application to the present case where the petition for that purpose was filed after the judgment had been entered and a bond filed to suspend the execution thereof pending appeal. On the other hand, it is the inherent power of all courts "to amend and control its process and orders so as to make them conformable to law and justice." (Section 11, paragraph 7, Act No. 190.)

One of the essential requisites provided by law for the issuance of a preliminary injunction is "that the commission or continuance of some act complained of during the litigation would probably work injustice to the plaintiff" (section 164, paragraph 2, Code of Civil Procedure), from which it is inferable that with the disappearance of this cause follows that of the reason or justification for the injunction, which should therefore not be continued in force. The filing by the China Insurance & Surety Co., Inc., of the appeal bond to secure the payment to the plaintiff and the intervenor in civil case No. 46389 of the amounts adjudicated to the latter in the judgment rendered in their favor in the event the same is affirmed on appeal, dispelled the fear of Injury to the interest of said plaintiff and intervenor sought to be safeguarded by the issuance of the aforementioned injunction. The respondent judge not only did not exceed his powers and jurisdiction, but complied with the principles of law and equity in issuing the order of November 5, 1935.

Wherefore, it is ordered, as we do hereby, that the petition be denied, with costs to the petitioners.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, and Laurel, 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.