

**RAFAEL MOLINA Y SALVADOR, PLAINTIFF AND APPELLANT, VS.  
ENRIQUE F. SOMES ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 7308. January 09, 1913*

Ponente: MORELAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-7308/>**MORELAND, J.:**

In 1903 Rafael Molina, the plaintiff herein, sold his business in the Island of Catanduanes to Antonio de la Riva for \$135,000 Mexican currency, to be paid by De la Riva in four equal installments, the first to be made at the time of the execution of the document, the second one year from the date thereof, the third at the end of two years from that date, and the fourth at the end of three years from that date, with interest at the rate of 5 per cent per annum to be paid at the end of each year. No payment was made by De la Riva under said contract except the first payment, which was that made at the date of the execution of the contract. Upon the second installment Molina brought suit in the Court of First Instance of Manila (No. 3402) and was given a judgment. An appeal was taken from said judgment by De la Riva and the Supreme Court affirmed it on the 22d of March, 1906.[1] Pending the appeal execution was stayed upon the filing of a supersedeas bond, with Enrique F. Somes, the defendant herein, as one of the sureties. While the suit for this installment was pending, the succeeding installment, amounting to P38,000, fell due. Default in its payment having been made, suit was brought in the Court of First Instance of the city of Manila (No. 3829). In this case, at the instance of Molina, a receiver was appointed to take possession of the property of De la Riva. Molina succeeded in this action. De la Riva again appealed to the Supreme Court, where the judgment was affirmed,[2] while the receivership granted in that action was declared void. When the first case (No.3402) was returned to the Court of First Instance after affirmance, De la Riva's property was still in the hands of the receiver; and, as execution against property thus in custodia legis could not be had, the Court of First Instance, on motion, entered judgment against the sureties on the supersedeas bond, including Somes, defendant herein. The sureties appealed from this judgment, their appeal being docketed as 3412,[1] and the order of the Court of First Instance was affirmed. The judgment in case No. 3402, which was the judgment on the first unpaid installment, was then satisfied out of the property of Somes. On the 19th of February, 1907, said Molina obtained another judgment against De la Riva in the Court of First Instance on the last installment due under the contract. Therefore, early in 1907 the situation was this: Somes had paid the judgment in case 3402 and was, therefore, a creditor of De la Riva for about P34,000. Molina had two judgments against De la Riva, in cases 3829 and 4766, aggregating about P81,000. The property of the debtor was released from the receivership and the question of priority arose between the creditors Somes and Molina. Gibbs, Gale and Carr, who had served De la Riva as attorneys, had taken judgment by default against De la Riva for P4,500 and had levied upon practically all his real estate. The levy had been suspended by the receivership, but was revived when the receivership was terminated by the judgment of the Supreme Court and said levy was terminated by a sale in the month of January, 1907. Molina obtained writs of execution on his two judgments, and levied on the property of De la Riva, including the equity of redemption of the real estate sold under the execution in favor of Gibbs, Gale and Carr. On the 26th of April, 1907, the defendant Somes filed a complaint against Molina and others in the Court of First Instance of Manila (No. 5448), alleging that by his payment of the judgment he had become subrogated to the

rights of the judgment creditor in case No. 3402, and that, because this judgment was senior to Molina's judgments in cases Nos. 3829 and 4766, he was entitled to a postponement of Molina's executions above mentioned until he, *Somes*, should have reimbursed himself out of *De la Riva's* property. Molina entered a demurrer to this complaint, which was sustained. *Somes* appealed, the case becoming in this court R. G. No. 4149.[1] On this appeal *Somes* asked for and obtained from the Supreme Court a preliminary injunction in said action dated August 3, 1907, restraining further proceedings in the execution of Molina's judgments in cases Nos. 3829 and 4766. A bond for the injunction in the sum of P10,000 was given, signed by *Gabriel Schmid*, *Cristina Gaskell* and *Fridolin Wiget* as sureties. It was not signed by *Somes*.

The Supreme Court reversed the judgment of the Court of First Instance entered on the order sustaining the demurrer and returned the case for further proceedings, leaving the injunction above referred to in full force and effect. (9 Phil. Rep., 653.) The Court of First Instance found in favor of *Somes*, holding that he was entitled to satisfy his judgment of P34,000 out of the specific property levied upon by Molina and belonging to *De la Riva* in preference to and ahead of Molina. Molina appealed but was unable to furnish a supersedeas bond; and *Somes* secured a writ of execution in case No. 3402, levied on all the property of *De la Riva*, sold it at public sale in due form of law, and bought it himself for P10,000. The legality and validity of the sale are not in question. On that appeal this court reversed the Court of First Instance, holding that, as to the specific property levied upon and then in the hands of the sheriff, Molina's judgments were entitled to preference over that of *Somes* (15 Phil. Rep., 133) in the distribution of the proceeds.

Molina thereupon in July, 1910, began the present action against *Somes* and the sureties on the bond given to obtain the injunction of August 3, 1907, praying for judgment against the sureties for the amount of the bond, P10,000, and against *Somes* for the value of the property of *De la Riva* out of which Molina might have satisfied his executions in 1907, except for what he terms *Somes'* unjustifiable interference. The Court of First Instance after trial, gave judgment against the sureties for P10,000 upon the bond, and against *Somes* for P11,000 on some other theory. No appeal has been taken from the judgment against the sureties. Both Molina and *Somes* have appealed from the judgment of P11,000 against the latter.

The argument on this appeal discloses that there is a contest between the parties as to the nature of the action brought by the plaintiff and as to the theory upon which it was tried in the court below. In that connection the plaintiff says in his brief in this court:

"Plaintiff in 1907 held final judgments against *Antonio de la Riva* aggregating P81,000, and was engaged in the execution of those judgments against the property of the debtor then available for the purpose. The defendant *Somes* interfered with plaintiff's execution, and successfully maintained his position until all the property of the debtor *De la Riva* had disappeared and *De la Riva* had become absolutely execution-proof. This interference on the part of *Somes* was unlawful, as this court decided in R. G. No. 5160 (15 Phil. Rep., 133). It follows that plaintiff has been damaged by defendant's conduct in the amount of the value of *De la Riva's* property subjected to plaintiff's levy in 1907, if that amount was within the figure of plaintiff's judgments. The only question is the determination of this value, which the trial court found to be P11,000."

He also says: "The complaint in this case, directed as it is against the sureties on the injunction bond as well as against their principal, is based principally upon the improvident granting of the injunction, but it also contains the statement of a cause of action, fully proven by the evidence, against the defendant *Somes* independently of the injunction proceedings. The Court of First Instance, in case No. 5448, entered a judgment in favor of *Somes* declaring that he was entitled to execute his judgment in case No. 3402 in preference to the execution of plaintiff's judgments in cases 3829 and 4766. This decision of the Court was subsequently reversed by the Supreme Court in R. G. No. 5160 (15 Phil. Rep., 133). If plaintiff had been able to furnish a supersedeas bond in case No. 5448, he would have enjoyed the fruits of his successful appeal in that case. As he was not able to effect the supersedes,

Somes proceeded to execute his judgment by obtaining a writ of execution in No. 3402 and enforcing it, taking the risk of a reversal upon plaintiff's appeal. It can hardly be doubted that if Somes had retained the property of De la Riva which he bought on his execution sale in case No. 3402 Molina, upon securing the reversal in R. G. No. 5160, could have levied in. execution of his judgments upon the property in Somes' possession. It necessarily follows that as Somes had conveyed that property to a third person, Jose Fortis, so that plaintiff could no longer follow it, Somes had damaged plaintiff to the extent of the value of the property on which Somes levied in consequence of the erroneous judgment of the Court of First Instance in Case No. 5448. It is submitted that when an appeal is taken without supersedeas, and the judgment appealed from is executed, and subsequently reversed, the appellee is bound to restore the status quo ante or respond in damages for his failure or inability so to do. Regardless of the injunction proceedings, therefore, Sr. Somes is bound to give effect to the decision of this court that the judgments of Molina were entitled to preference over that of Somes and to undo the consequences of the erroneous judgment of the Court of First Instance."

We cannot agree with the appellant Molina that the action is not only one for the recovery of damages by reason of the issuance of an injunction but also one to recover damages sustained by reason of the execution of a judgment which was afterwards reversed on appeal. It appears to us from the complaint and the opinion of the court below and the general attitude of the parties, both in the court below and here, that the complaint presents, from every possible legal aspect, simply an action to recover damages alleged to have been occasioned by the defendant Somes suing out a temporary injunction which was subsequently vacated by a final judgment of the Supreme Court. It seems to have been tried altogether on that theory. The judgment of the Court of First Instance seems also to rest entirely upon that theory. The results of that theory, as well as the theory itself, have been accepted by the plaintiff not only as against the sureties on the bond, who have not appealed from the judgment rendered against them on that undertaking, but also as against Somes, the judgment against whom in the Court of First Instance based on the injunction theory has been accepted by him (the plaintiff) in that court, as in this, he appealing from such judgment only by reason of the amount.

Paragraph II of the complaint sets out the ownership of certain judgments upon which he (plaintiff) had issued executions. Paragraph III alleges the obtaining by Somes of the preliminary injunction from the Supreme Court, restraining Molina from proceeding further in the execution of those two judgments. Paragraph IV alleges the making of the bond preliminary to the injunction and states who were the persons signing the same. Paragraph V alleges the ownership by Somes of a judgment against De la Riva, against whom the plaintiff also held the two judgments theretofore referred to in the complaint and alleges that "on the 10th day of May, 1909, he executed said judgment, and upon said execution had sold, and himself bought, all the property, real and personal, of the aforesaid Antonio de la Riva,, while this plaintiff was still under the restraint of the aforesaid preliminary injunction, and thereafter sold and transferred to a third party all of the property by him acquired as aforesaid on the execution sale." The last paragraph of the complaint alleges the value of the property and the fact that De la Riva is insolvent and has no property out of which the plaintiffs judgments may be paid. It also alleges "that the aforesaid preliminary injunction, notwithstanding diligent effort on the part of this plaintiff to have the same vacated, remained continuously in force until after the aforesaid execution sale of the defendant Enrique F. Somes, and until after the disposition by said Somes of the property by him acquired as aforesaid at said sale. That said injunction was improperly issued, and that the defendant Enrique F.Somes was not entitled to said injunction nor to restrain the execution by this plaintiff of the latter's judgments against Antonio de la Riva, and that said execution was issued solely upon the affidavit of the defendant Enrique F. Somes, and that the allegations of said affidavit had been conclusively adjudged to be untrue by the Supreme Court of the Philippine Islands in cause No. 5448 of the docket of this court." Then follows the prayer for relief, as follows:

"Wherefore plaintiff prays that judgment be rendered against defendant Enrique F. Somes for the sum of

P80,818.06 Philippine currency, with interest thereon at 5 per cent per annum from July 27, 1903, and against the defendants Gabriel Schmid, Cristina Gaskell de Schmidt, and Fridolin Wiget, jointly and severally, for the sum of P10,000 Philippine currency, and that plaintiff recover his costs in this action, and for such other and further relief as the court may deem just and proper."

In its opinion the Court of First Instance says:

"This case is before the court for trial upon a complaint by the plaintiff to recover from the defendant Enrique F. Somes the sum of P80,818.06 and from the other defendants the sum of P10,000, alleged to be damages suffered by the plaintiff on account of an injunction issued at the request of the defendant Somes, and a bond given upon which the other defendants were sureties and by which the plaintiff was restrained from levying an execution to satisfy judgments obtained by him.

"The defendant Somes answered admitting practically all the allegations of the complaint, except those which alleged that he was the owner of a judgment against one Antonio de la Riva and had levied execution issued on it, and had sold all of De la Riva's property, and that the property sold was sufficient to satisfy all of plaintiff's judgments: That De la Riva was insolvent, and alleged as a special defense that he had obtained an injunction against the plaintiff and several other persons which after being set aside was finally left in full effect, and that prior to all proceedings Gibbs, Gale & Carr had obtained judgment against Antonio de la Riva, levied execution under it, and sold all of the real estate of De la Riva in the Island of Catanduanes, and also alleged that he, the defendant Somes, had never levied upon or sold such real estate; but that having obtained judgment against De la Riva execution issued, and was levied upon the property of De la Riva, and the property sold for P10,000."

The court further says:

"The defendants insist that the plaintiff cannot recover in this action because the damages suffered on account of conditions which appear from the pleadings must be assessed in the action or proceeding and in the court trying the action; that is, the action in which the injunction was issued, which was the basis of the damages."

The court then takes up the questions of procedure relative to the recovery of damages sustained by reason of the issuance of an injunction, and discussed whether or not the proceedings instituted for that purpose should be brought in the same action in which the injunction was issued as an incident thereof, or whether they should be carried on in a separate action. After thorough consideration it was held that such proceeding must be brought and carried on in the same action as an incident thereof. The decision concludes as follows:

"The defendant Somes having stopped the plaintiff from recovering upon his judgments, for reasons which were afterwards found to be not valid, is liable for any damages which the plaintiff may have suffered on account thereof, and the other defendants, as his sureties, are also liable to the extent of their bond.

"The defendant Somes, while the injunction was in force, having levied upon and sold the property which the plaintiff was restrained from selling, under his execution, having left the plaintiff without other property of his judgment debtor against which to proceed, has damaged the plaintiff to the extent of the value of the property which plaintiff had levied upon, at the time he was restrained from proceeding with the sale."

On his appeal to this court, the plaintiff presented the following assignment of errors:

"1. That the said Court of First Instance found as a fact that the damages suffered by plaintiff amounted only to P11,000.

"2. That the said Court of First Instance of Manila rendered judgment against the defendant Enrique F. Somes in the sum of P11,000 instead of in accordance with the prayer of plaintiff's complaint."

The opening paragraph of plaintiff's brief on appeal is as follows:

"Plaintiff in 1907 held final judgments against Antonio de la Riva aggregating P81,000, and was engaged in the execution of those judgments against the property of the debtor then available for the purpose. The defendant *Somes* interfered with plaintiff's execution, and successfully maintained his position until all the property of the debtor *De la Riva* had disappeared and *De la Riva* had become absolutely execution proof. This interference on the part of *Somes* was unlawful, as this court decided in R. G. No. 5160 (15 Phil. Rep., i33). It follows that plaintiff has been damaged by defendant's conduct in the amount of the value of *De la Riva*'s property subjected to plaintiff's levy in 1907, if that amount was within the figure of plaintiff's judgments. The only question is the determination of this value, which the trial court found to be P11,000."

The first intimation that the defendant had, so far as shown by the record, that plaintiff based his right to recover upon the theory of restitution appears in that portion of plaintiff's brief devoted to answering defendant's brief on appeal. Although one of the special defenses interposed by the defendant *Somes* to plaintiff's complaint in the court below was that the property of *De la Riva* was not lost to plaintiff by reason of the injunction, which was the basis of his complaint, but, rather, by reason of the execution of the judgment of the Court of First Instance in case No. 5448 which determined that *Somes*' judgment was entitled to preference over the two judgments of *Molina*, in spite of this plain contention of the defendant that the cause of all the damages, if any, was the execution of said judgment, nevertheless, the plaintiff did not amend his complaint to meet that suggestion, but, instead, elected to proceed and did proceed and tried his case upon, the theory upon which he had already placed himself.

We conclude, then, that the plaintiff cannot, under these circumstances, be allowed, at this time, to change the theory and nature of his cause of action and recover upon grounds never heretofore set forth.

This conclusion is necessary for several reasons, in addition to the surprise of the defendant which would naturally follow such a change:

First. Because the findings and judgment of the court of first instance, based upon the improvident issuance of an injunction, have been accepted by the plaintiff in every particular except that relating to the amount of damages.

Second. Because the theory of an action based upon the improvident issuance of an injunction is incompatible with a cause of action based upon the theory of restitution, for, if the damages were actually caused by the execution of the judgment in cause No. 5448, then they could not have been caused by the issuance of the injunction. The injunction did no more than tell *Molina* to hold on. It did not order, him to turn the property over to *Somes* or anybody else. It was restraining, not mandatory. But even if *Molina* had been under the restraint alleged, he suffered no injury thereby, as the judgment in case No. 5448 was in force against *Molina* and he could not, in the face of it, have applied such property to the payment of his own debt. Under the judgment, *Somes* had the sole right to do that. *Molina* was powerless to benefit himself with *De la Riva*'s property if there had been no injunction whatever. *Somes* took and *Molina* lost the property not because of any restraint imposed on the latter, but by reason of judgment rights of the former.

Third. The plaintiff already has a judgment against the sureties upon the bond given to secure the injunction and also a judgment against *Somes* based expressly upon the improvident issuance of that injunction. To permit the plaintiff now to recover upon the theory of restitution would be to permit him to obtain two final judgments in the same cause, each of which is based upon the theory that the other is wrong. If the damages were caused by the execution of the judgment of the Court of First Instance in case No. 5448, then the final judgment against the original codefendants of *Somes* on the theory that the damages were caused by the injunction is entirely without foundation. We do not believe that the plaintiff ought to be permitted to retain the benefits of the final judgment against the bondsmen and also to recover and take the benefits of a judgment against the principal upon a cause of action which proceeds on the theory that said bondsmen are not liable.

The plaintiff, then, must recover, if he recover at all, upon the allegations of his complaint which presents a cause

of action solely of damages sustained by the obtaining of an injunction, and upon which theory the cause was presented, tried, decided, and judgment accepted.

We are unable to see how the plaintiff can recover on the theory presented. It is conceded that *Somes* did not sign or otherwise agree to the bond upon which the injunction was obtained. He cannot, therefore, be held upon it. The statute which provides for the issuance of injunctions and for the undertakings which are the basis of their issuance nowhere lays down a different rule of liability than that established by the general principles of the law. The statute prescribed the method by which a party may make himself liable for the damages resulting from an injunction. It nowhere makes him responsible in any way apart from the bond itself. As a necessary consequence, in determining whether or not *Somes*, in this view of the case, is liable in the action at bar, we must revert to the general principles of the law. In doing this we observe at the outset that the complaint does not allege any facts upon which the defendant can be held liable; nor does the evidence, as disclosed by the opinion of the court below, contain a particle of proof which would tend to establish his liability. In an action for improperly suing out an injunction, the same principles apply as in cases where it is sought to make a plaintiff liable for bringing an action. The two essential requisites are malicious prosecution and lack of probable cause. These are neither alleged nor proved in the case before us.

It may be true that *Molina* would have gone and collected his executions if *Somes* had not begun his action, and that he probably would have been the gainer by so much as he received from such collection, but it in nowise follows that because *Somes* brought the action he is liable for anything that *Molina* may have failed to collect by reason thereof. In every case where one brings an action against another and fails to recover, the one against whom the action was brought has in a real sense been injured and damaged by the action. He has been troubled. He has hired lawyers. He has procured witnesses. He has paid out money. He may have been obliged to neglect his business and his profits may have materially decreased. He may have been injured in his credit and standing. That does not mean, however, that he can recover from the plaintiff the damages which he suffered by reason of the action having been brought. If that were the case, there would be an end of actions in court. It is to prevent such a condition that the law has laid down a rule relative to the liability incurred in bringing an action different from that applicable in cases where damages are sustained by reason of a direct act. Before one can recover damages from another by reason of an action having been brought against him, he must show not only that there was a lack of probable cause but that the action was maliciously brought. In the case at bar, nothing happened to *Molina* by reason of any act of *Somes* except that which naturally followed from the bringing of the action, assisted by the voluntary acts of *Molina*, for which latter the bringing of the action was in no way responsible.

What we have said relative to the bringing of an action will apply to the issuing of an injunction. In many actions the obtaining of an injunction is the essence of the recovery, and without it a judgment would be worthless. One who brings an action has a right to all of the incidents and aids which the law joins to that action. Therefore, in the absence of a statute to the contrary, there is no more liability incurred in securing an injunction than there is in bringing an action; and damages for the improper suing out of an injunction will lie only upon the same basis and for the same reasons as actions for damages for bringing an action.

This proposition is founded upon reason as well as authority. It is apparent that in many cases actions are entirely futile unless the plaintiff can take advantage of some preliminary remedy. To that end, legislatures have provided, in various states and countries, that in certain kinds of action the plaintiff, may, upon meeting expressed conditions do certain things as preliminary remedies, which will insure the efficacy of his judgment, if he secures one. A familiar example of such a preliminary remedy is the injunction. It is clear, and is demonstrated every day in actual practice, that many actions would be fruitless if the plaintiff could not obtain an injunction to maintain the status quo until the final determination of the rights of the parties. It having been ascertained by the settled

experience of society that an injunction is in many cases, a necessary prerequisite to an action, reason as well as logic would, so far, as the liability of the person suing out the injunction is concerned, require that the same principles apply as govern in an action brought to recover damages for the wrongful bringing of an action. In other words, the principles of liability which control where a plaintiff is sued for wrongfully bringing an action should be the same principles which govern in an action brought for the wrongful suing out of an injunction. The injunction is a necessary incident or part of the action. It is absolutely essential to the action. The action is worthless without it. It would be surprising to see the act relating to the main thing, namely, the action, governed by one principle, while the act relating to that which is the essential incident or part of the action, namely, the injunction governed by another and different principle

The attempt to secure that which the law gives for the purpose of making the action worth bringing, and without which it would be entirely barren, should not entail a greater responsibility than would the bringing of the action itself, to which it is appurtenant, and to which it necessarily and really belongs.

The assertion by some text writers and courts that the one who sues out an injunction without legal cause is liable on the theory that he wrongfully induced or moved the court to take the action which it did, is, in our judgment, without stable foundation. He who obtains a thing by permission of the law, and by strict compliance with the law, ought not to be held liable in any manner except that specified in the law under which he operates. He ought not to be held for a trespass or other wrong, as they assert he may be in replevin, etc. How can it be logically said that one who, acting in good faith, obtains an injunction or property under a replevin in precisely the manner required by law has committed a legal wrong against the person as to whom the law authorizes him to obtain the injunction? The law itself, by virtue of the conditions which it imposes, fully protects the defendant against the evil effects of the injunction; and if the party securing the injunction has performed all that the law requires of him as a condition precedent to obtaining it, what more can be asked? In return for the restrictions of the injunction, the defendant has been given certain legal rights against the plaintiff by way of an undertaking which, by virtue of the law itself, fully compensates him for the change of position. The bond is full compensation for the privileges which the plaintiff receives and for those which the defendant loses. The law says so. The statute asserts that the doing of certain things by the plaintiff shall be a complete compensation to the defendant for that which the law requires him to give up. If it is not complete compensation, then the law is unjust, in that it requires the defendant to give up something for which he receives no compensation. It is not to be presumed or believed that the legislature intended to do such a thing, and it is not to be presumed or believed that it did do it. But, even if the law be unjust, an injustice of the law cannot be cured by an injustice to a party. The giving of the undertaking legally equalizes the status of the two. To put upon the plaintiff the additional burden of a trespass or other wrong would destroy the legal equilibrium and produce an injustice.

The assertion of text writers and that the party in cases of replevin or injunction, wrongfully put the court in operation, and that, therefore he is liable as in tort or otherwise apart from his bond to the defendant therefore, is, in our judgment, also unfounded. Such a theory is bad not only for the reasons already given but also for the further reason that it makes the plaintiff an insurer of the judgment of the court. In other words, upon that theory, the plaintiff, before he can safely obtain an injunction or a replevin, must be certain that the court will decide in his favor; that is, the plaintiff must insure a judgment of the court in his favor, on the pain of being sued in tort or other legal wrong, in addition to his liability resulting from the responsibility of his sureties on the bond. Such a theory nullifies the symmetry of the law and destroys the equality between the parties which the law establishes. As we have said, the statute asserts conclusively that the giving of a bond to the defendant is an exact equivalent for the loss which he sustains by reason of his change of position. In other words, the plaintiff has paid the defendant in full for whatever benefits he has obtained from him. If, now, we add to that payment the obligation to respond to a defense in damage for the commission of a tort or other wrong, we at once destroy that equality

which the law has established, and lay a burden upon the plaintiff which, in equity, he ought not to bear and which, under the law, he is not required to bear. The law expressly states what shall be his punishment if he is wrong. Courts cannot by their own fiat add anything more. The injury is caused by operation of the law, not by the act of plaintiff.

It is for these reasons, among others, that we have arrived at the conclusion that an action for damages for the improper suing out of an injunction must be maintained upon the same principles which govern an action for the wrongful bringing of an action.

In the case of *Meyers vs. Block* (120 U S., 206, 211), the court, having under review this very question, said, in speaking of the principles upon which an action may proceed which is brought for the purpose of obtaining damages by reason of the wrongful suing out of an injunction:

"Recover, how? By the law of Louisiana damages may be recovered for suing out an injunction without just cause, independently of a bond. (3 La., 291.) But this cannot be done in the United States courts. Without a bond no damage can be recovered at all. Without a bond, for the payment of damages or other obligation of like effect, a party against whom an injunction wrongfully issues can recover nothing but costs, unless he can make out a case of malicious prosecution. It is only by reason of the bond, and upon the bond, that he can recover anything."

In the case of *Russell vs. Farley* (105 U. S., 433, 438), Mr. Justice Bradley, in alluding to the practice of courts of chancery in granting injunction, says relative to the fundamental reason why damages cannot be obtained against a person wrongfully suing out an injunction:

"And if the legal right is doubtful, either in point of law or of fact, the court is always reluctant to take a course which may result in material injury to either party, for the damage arising from the act of the court itself is a *damnum absque injuria*, for which there is no redress except a decree for the costs of the suit, or in a particular [proper] case, an action for malicious prosecution. To remedy this defect [difficulty], the court, in the exercise of its discretion, frequently resorts to the expedient of imposing terms and conditions upon the party at whose instance it proposes to act."

The case of the *City of St. Louis vs. the St. Louis Gaslight Company* (82 Mo., 349-357), says:

"Thus it will be seen that the liability of the plaintiff in an injunction suit to respond to the defendant for damages after dissolution depended upon his voluntary undertaking contained in the conditions of the decree, or in his separate agreement and bond given to the court or defendant for that purpose. Of course, when the process has been sued out maliciously there may be a right of action in favor of the defendant. But this right depends upon the law governing malicious prosecutions, and has no relation to the claim for damages urged by defendant in this case. \* \* \*

"Such exemption of the plaintiff from damages, in the absence of any terms or conditions accepted by him to pay them, rests upon the broad policy of the law which regards the courts open at all times to all persons for the enforcement of their rights by civil action. Suitors are presumably acting in accordance with law when they obtain in the courts what the courts award them, and should not be punished for accepting what they could not obtain except by such orders and judgments. When a suitor procures a writ or order of injunction upon a fair presentation of facts to the court in good faith he has never been regarded as responsible in damages therefor, either in law or equity, unless he has made himself so by some voluntary undertaking. In such case he stands before the law like a suitor in any other process or proceeding. This I understand to be the rule, as universally recognized and approved. (*Sturgis vs. Knapp*, 33 Vt., 486; *Gorton vs. Brown*, 27.111.,489; *Lawton vs. Green*, 5 Hun, 157; *L. & O. R. R. Co. vs. Applegate*, 8 Dana, 289; *Palmer vs. Foley*, 71 N. Y., 106; *Russell vs. Farley*, 105.17. S., '433; *Iron Mountain Bank vs. Mercantile Bank*, 4 Mo. App., 505.)"

In the case of *Palmer vs. Foley* (71 N. Y., 106, 108), Judge Folger expresses this condition of the law:

"It seems that, without some security given before the granting of an injunction order, or without some order of the court or a judge, requiring some act on the part of the plaintiff, which is equivalent to the giving of security such as a deposit of money, in court the defendant has no remedy for any damages which he may sustain from the issuing of the injunction, unless the conduct of the plaintiff has been such as to give ground for an action for malicious prosecution."

To the same effect are the following cases: *Lawton vs. Green* (64 N. Y., 326), *McLaren vs. Bradford* (26 Ala., 616), *Robinson vs. Kellum* (6 Cal., 399), *Asevado vs. Orr* (100 Cal., 293, 34 Pac, 777), *Harless vs. Consumers' Gas Trust Co.* (14 Ind. App., 545, 43 N. E., 456), *Cox vs. Taylor's Admr.* (49 Ky., 17), *Hayden vs. Keith* (32 Minn., 277, 20 N. W., 195), *Manlove vs. Vick* (55 Miss., 567), *Keber vs. Mercantile Bank* (4 Mo. App., 195), *Iron Mountain Bank vs. same* (id., 505), *Campbell vs. Carrol* (35 Mo. App., 640), *Mark vs. Hyatt* (31 N. E., 1099), *Gordon vs. Brown* (27 111., 489, 81 Am. Dec, 245), *Hutchins vs. Rogers* (22 Wkly. Notes Cas., 79).

Here we have a case in which the action, in a sense, was improperly brought and the injunction was, in the same sense, improperly obtained. That does not mean, as we have seen, that the plaintiff is, for that reason, liable for the damages which the defendant may have suffered. Before that liability can attach, it must appear that the action was brought and the injunction obtained maliciously and without probable cause. Of course, if the injunction bond were relied upon, as it was as to part of the defendants, we would have a case in which the lack of probable cause and the malice would be immaterial; but it is conceded that *Somes* did not sign the bond and that he cannot, therefore, be held responsible thereon.

Having found that, conceding that the injunction remained in force until after the levy and sale by *Somes*, the plaintiff cannot recover, it becomes unnecessary to determine whether the injunction was really existent at that time or whether it was merged in the final judgment of the Supreme Court of January 20, 1908, or in the judgment of the Court of First Instance of December 7, 1908, the judgment determining the relative rights of *Molina* and *Somes* in the proceeds of the property here in suit.

The judgment as to *Somes* is hereby reversed and the complaint as to him is dismissed upon the merits, without special finding as to costs.

Torres, J., concurs.

Carson and Trent, JJ., concur in the result.

---

[1] *Molina vs. Dela Riva*, 6 Phil. Rep., 12.

[2] *Molina vs. Dela Riva*, 7 Phil. rep., 302.

[1] *Molina vs. Dela Riva*, 7 Phil. Rep., 345.

[1] *Somes vs. Molina*, 9 Phil. Rep., 653.

**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.