SPEECH OF PRESENTATION

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(Member of the Bar)

January 18, 1954

MAY IT PLEASE THE COURT:

The honor of presenting to this Honorable Court, for admission to the Bar, the candidates who successfully passed the examinations given last year has been bestowed upon me. Allow me to acknowledge my appreciation of the privilege with the observation that there are other members of the Committee of Bar Examiners, far more brilliant and experienced in the law than I, who could have lent greater prestige to this task.

Your Honors, before making my formal presentation, and as is usual in occasions of this nature, let me express some thoughts and hopes for these successful candidates. I shall be brief in my remarks for, recalling my own reaction as one of the successful Bar Candidates in 1931, I feel that the candidates I am now in turn sponsoring are likewise aware only of the solemn formality of these rites where they have to, first: listen to a speech of presentation by a member of the Committee of Bar Examiners; second: take their oaths; and third and last: attend to words of advice from the member of this Honorable Court designated to address them on their admission to the Bar. Whatever substantial meaning there might be to this gathering will be lost to these candidates either spontaneously or within the passage of a very meagre measure of time. Most of them are perhaps even now wishing that these ceremonies were over so that they can the sooner join their intimates and loved ones. Indeed, it is not strange for young people to live in improvident hopes for the future without realization that the pattern of that which is to come is in the main worked out by activities and preparations of the present.

Now-a-days, major undertakings are seldom pursued without a plan. It is now generally conceded that a project should not be left to improvisation as it takes its course to a conclusion. A commanding officer must even have a plan of retreat should the fortunes of war turn against him; otherwise, his forces may be totally annihilated.

I know that the course of an individual's life cannot be deliberately and exactly planned. Paraphrasing Shakespeare, we are all like swimmers in the sea, and the ocean waves and currents may cast us ashore or take us farther out; only the event will tell in its coming. Be that as it may, planning for our lives is not at all without value. The candidates I am sponsoring, for example, have planned to be lawyers, and they will be admitted to the Bar in a few moments. My late and revered father was an almost indigent student in his day who could not finance his own schooling. He wanted to be a Pharmacist, but the worthy fathers who gave him his high school training recognized his aptitude for the study of law. They offered him free tuition in the college of law, and he had to take it in preference to the payment of fees in the School of Pharmacy. It turned out to be good planning for him.

Planning for a lawyer, after his admission to the Bar, is difficult. I must confess I did not have the benefit of one. But I had, instead, a human ideal in the person of my father by whose standards I sought to guide my own behavior. My father once remarked to Senator Laurel as follows: "If you have lost your money, you have lost nothing; if you have lost your health, you may have lost something; but if you lose your honor and integrity, you will have lost everything". That simple principle, *inter alia*, has steered me to where I am; — not a very successful lawyer perhaps, but one happy and at peace with his own self.

The establishment of an ideal to emulate is within the reach of all these candidates. The lives of Arellano, Araullo, Mapa and many other luminaries in Bench and Bar are open books, and the principles they followed belong to the realm of public property which anyone, with the desire, can appropriate to himself. Once an ideal has been fixed as a goal, it will serve as a guiding beacon light and it should be relatively easy, once in a while, to stop and ponder on whether or not the young lawyer is still going in the direction of that goal, and how much progress he has made in the meantime. With hard work and perseverance, and an objective in mind, the chances for success would be much more than where one is just drifting aimlessly in the struggle for existence.

Admission to the Bar is technically the culmination of preparation; it is also technically the start of operation. But the field of law is so vast that we can never say that the activity of preparation or study is really ended. A lawyer continues to study and still learn as he works. I am reminded of the following incident in my father's life. After his own admission to the Bar, he applied for a law clerkship in the law office of the deceased De Icaza. Mr. De Icaza took my father to his library and asked him if he had read all the books there. My father, of course, replied in the negative. Mr. De Icaza then told my father that in order to be a successful lawyer, he must read all these books. The incident is an extreme example, but it portrays the necessity on the part of the lawyer to work hard and to be constantly wide-read in the literature of his profession.

A lawyer should not cultivate only the factors that make for success. He must also strive to have traits that will make him a happy man and a good citizen. He must be fair to his adversaries; he must be true and loyal to his friends. He must possess a civic consciousness. And with significant emphasis, I wish to stress the fact that he must also fully appreciate the quality of gratitude. The man who knows how to be grateful to those who have helped him is the man who will reap success and happiness together. Gratitude is a tender memory of the heart. I trust, above all, that these candidates will never for an instant forget the debt they owe their parents or any other people who have made it possible for them to be present at this oath-taking.

As a rule, the average man is more emotional than rational. The requirement for lawyers is quite different. He must always be rational, never emotional. Justice is founded on reason, never on emotion. There is no known way by which human justice can be dispensed by agencies without the aid of the human judgment, and for this reason the administration of justice can never be perfect. Human judgment cannot be infallible. This circumstance should all the more inspire these candidates to seek truth and justice without emotion. They might do well to ever repeat this prayer to St. Thomas More, patron saint of lawyers:

> "O Almighty and Eternal God, Judge and Lawgiver, send your Holy Spirit upon me that I may have light to know what is right, wisdom to analyze and interpret the tangled strands of human perplexities, and strength to act upon my honest convictions. Never let me use any situation or information to my own unfair advantage. Let me be fearless in defense of justice. O good St. Thomas More, give me of your fortitude and wisdom. Pray that our country may have just laws and wise men to decide and strong to execute. Amen."

With that prayer to St. Thomas More, let me now respectfully move before this Honorable Court, on behalf of the Chairman and the Committee of Bar Examiners for 1953, that the candidates who successfully passed the examinations given in August of last year be admitted to the Philippine Bar.

to the property by any proper action." What is "proper action"? Section 1 of Rule 2 defines action as "an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong," while Section 2, entitled "Commencement of Action," says that "civil action may be commenced by filing a complaint with the court."

"Action" has acquired a well-defined, technical meaning, and it is in this restricted sense that the word "action" is used in the above rule. In employing the word "commencement" the rule clearly indicates an action which originates an entire proceeding and puts in motion the instruments of the court calling for summons, answer, etc., and not any intermediary step taken in the court of the proceeding whether by the parties themselves or by a stranger. It would be strange indeed if the framers of the Rules of Court or the Legislature should have employed the term "proper action" instead of "intervention" or equivalent expression if the intention had been just that. It was all the easier, simpler and the more natural to say intervention if that had been the purpose, since the asserted right of the third-party claimant necessarily grows out of a pending suit, the suit in which the order of attachment was issued.

The most liberal view that can be taken in favor of the respondents' position is that intervention as a means of protecting the third-party claimants' right is not exclusive but cumulative and suppletory to the right to bring a new, independent suit. It is significant that there are courts which go so far as to take the view that even where the statute expressly grants the right of intervention in such cases as this, the statute does not extend to owners of property attached, for, under this view, "it is considered that the ownership is not one of the essential questions to be determined in the litigation between plaintiff and defendant;" that "whether the property belongs to defendant or claimant, if determined is considered as shedding no light upon the question in controversy, namely, that defendant is indebted to plaintiff." See 7 C. J. S. 545 and footnote No. 89 where extracts from the decision in Lewis v. Lewis, 10 N.W. 586, a leading case, are printed.

Separate action was indeed said to be the correct and only procedure contemplated by Act No. 190, intervention being a new remedy introduced by the Rules of Court as addition to, but not in substitution of, the old process. The new Rules adopted Section 121 of Act No. 190 and added thereto Rule 24 (a) of the Federal Rules of Procedure. Combined, the two modes of redress are now Section 1 of Rule 13(1) the last clause of which is the newly added provision. The result is that, whereas, "under the old procedure, the third person could not intervene, he having no interest in the debt (or damages) sued upon by the plaintiff," under the present Rules, "a third person claiming to be the owner of such property may, not only file a third-party claim with one sheriff, but also intervene in the action to ask that the writ of attachment be quashed." (I Moran's Comments on the Rules of Court, 3rd Ed. 238, 239.) Yet, the right to intervene, unlike the right to bring a new action, is not absolute but left to the sound discretion of the court to allow. This qualification makes intervention less preferable to an independent action from the standpoint of the claimants, at least. Because availability of intervention depends upon the court in which Case No. 11531 is pending, there would be no assurance for the herein petitioners that they would be permitted to come into that case.

Little reflection should disabuse the mind from the assumption that an independent action creates a multiplicity of suits. There can be no multiplicity of suits when the parties in the suit where the attachment was levied are different from the parties in the new action, and so are the issues in the two cases entirely different. In the circumstances, separate action might, indeed, be the more convenient of the two competing modes of redress, in that intervention is more likely to inject confusion into the issues between the parties in the case for debt or damages with which the third-party claimant has nothing to do and thereby retard instead of facilitate the prompt dispatch of the controversy which is the underlying objective of the rules of pleading and practice. That is why intervention is subject to the court's discretion.

The same reasons which impelled us to decide the second question, just discussed, urge us to take cognizance of and express an opinion on the third.

The objection that at once suggests itself to entertaining in Case No. 12263 the motion to discharge the preliminary attachment levied in Case No. 11531 is that by so doing one judge would interfere with another judge's actuations. The objection is superficial and will not bear analysis.

It has been seen that a separate action by the third-party who claims to be the owner of the property attached is appropriate. If this is so, it must be admitted that the judge trying such action may render judgment ordering the sheriff or whoever has in possession the attached property to deliver it to the plaintiff-claimant or desist from seizing it. It follows further that the court may make an interlocutory order, upon the filing of such bond as may be necessary, to release the property pending final adjudication of the title. Jurisdiction over an action includes jurisdiction over an interlocutory matter incidental to the cause and deemed necessary to preserve the subject matter of the suit or protect the parties' interests. This is self-evident.

The fault with the respondents' argument is that it assumes that the Sheriff is holding the property in question by order of the court handling the case for libel. In reality this is true only to a limited extent. That court did not direct the Sheriff to attach the particular property in dispute. The order was for the Sheriff to attach Borres', Padilla's and Pastor's property. He was not supposed to touch any property other than that of these defendants', and if he did, he acted beyond the limits of his authority and upon his personal responsibility.

It is true of course that property in custody of the law can not be interfered with without the permission of the proper court, and property legally attached is property in *custodia legis*. But for the reason just stated, this rule is confined to cases where the property belongs to the defendant or one in which the defendant has proprietary interest. When the sheriff acting beyond the bounds of his office seizes a stranger's property, the rule does not apply and interference with his custody is not interference with another court's order of attachment.

It may be argued that the third-party claim may be unfounded; but so may it be meritorious for that matter. Speculations are however beside the point. The title is the very issue in the case for the recovery of property or the dissolution of the attachment, and pending final decision, the court may enter any interlocutory order calculated to preserve the property in litigation and protect the parties' rights and interests.

None of what has been said is to be construed as implying that the setting aside of the attachment prayed for by the plaintiffs in Case No. 12263 should be granted. The preceding discussion is intended merely to point out that the court has jurisdiction to act in the premises, not the way the jurisdiction should be exercised. The granting or denial, as the case may be, of the prayer for the dissolution of the attachment would be a proper subject of a new proceeding if the party adversely affected should be dissatisfied.

The petition for certiorari is granted with costs against the respondents except the respondent Judge.

Moran, Paras, Feria, Pablo, Bengzon, Padilla; Montemayor; Reyes, Jugo, Bautista Angelo, J.J. concur.

(1) Section 1. When Proper.—A person may, at any period of a trial, be permitted by the court, in its discretion, to intervene in an action if he has legal interest in the matter in litigation or in the sucess of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.

RECOGNIZE THEIR RESPECTIVE RESPONSIBILITY

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(which, by the way, is represented not only by the Supreme Court but also by the Court of Appeals, Court of First Instance, municipal and justice of the peace courts, and even such other commissions and boards as are exercising quasi-judicial powers). As this Convention closes and the conventionists return to their own localities, it is my fervent hope and plea that all concerned will ever be responsibility conscious.

Happy New Year to all.