Manila Herald Publishing Co., et al., Petitioners, vs. Hon. Simeon Ramos, et al., Respondents, G. R. No. L-4268, January 18, 1951.

1. PLEADING AND PRACTICE; DISMISSAL OF ACTION BY COURT MOTU PROPIO.—Section 1 of Rule 8 enumerates the grounds upon which an action may be dismissed, and it specifically ordains that motion to this en
the light of this express requirement, the
Instance has no power to dismiss a case, wherein no motion to dismiss or an answer had been filed. Even if the parties file memoranda upon the court's indication in which they discuss the proposition that the action was
cessary and was improperly brought, this would not supply the deficiency. Rule 30 of the Rules of Court provides for the cases in which an action may be dismissed, and the inclusion of those therein provided excludes any other, under the familiar maxim, "inclusio unius est exclusio alterius." The only instance in which, according to said rules, the court may dismiss upon the court's own motion an action is, when the "plaintiff fails to appear at the time of the trial or to prosecute his action for an unreasonable length of time or to comply with the Rules or any order of the court." To dismiss the case without any formal motion to dismiss, would be acting with grave abuse of discretion if not in excess of jurisdiction.

ID.; PRELIMINARY INJUNCTION; THIRD-PARTY CLAIMS.—Section 14 of Rule 59, which treats of the steps to be taken when property attached is claimed by any other person than the defendant or his agent, contains the proviso that "Nothing herein contained shall prevent such third person from vindicating his claim 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 course 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. The most liberal view that can be taken in favor of the attaching party's 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 to 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, leading case, are printed.)

ID.; ID.; ID.. — 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

concur.

and added thereto Rule 24(a) of the Federal Rules of Civil Procedure. (See 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 third-party claimants, at least.

4. ID.; ID.; ID. — Q filed a civil action against B and secured preliminary attachment on *B's properties*. M and P filed with the sheriff separate third-party claims alleging that they were the owners of the property attached; and instead of intervening in the case, M and P filed an independent action jointly against the sheriff and Q. The first case was pending before the branch of the court presided over by Judge S, and the new action is before the branch of the court presided over by Judge R. Can Judge R *entertain* a motion to discharge the preliminary attachment in the action pending before Judge S? *Held*: The sheriff is not holding the properties in question by order of Judge S; in reality this is true only to a limited extent. Judge S did not direct the sheriff to attach the particular property in dispute The order was for the sheriff to attach B's properties. He was not supposed to touch any property other than that of B, 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 cannot be interferred 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 B or one in which B has proprietary interest. When the sheriff, acting beyond the bounds of his office, seizes M's and P's properties, the rule does not apply and interference with his custody is not interference with another court's order of attachment. None of what has been said, however, is to be construed as implying that the setting aside of the attachment prayed for in the case before Judge R should be granted. The preceding discussion is intended merely to point out that Judge R has jurisdiction to act in the premises, not the way the jurisdiction should be exercised.

Edmundo M. Reyes and *Antonio Barredo* for petitioners.
Bausa and *Ampil* for respondents.

DECISION

TUASON, *J.*:

This is a petition for "certiorari with preliminary injunction" arising upon the following antecedents:

Respondent Antonio Quirino filed a libel suit, docketed as Civil Case No. 11531, against Aproniano G. Borres, Pedro Padilla and Loreto Pastor, editor, managing editor and reporter, respectively, of the Daily Record, a daily newspaper published in Manila asking damages aggregating ₱90.000.00. With the filing of this suit, the plaintiff secured a writ of preliminary attachment upon certain office and printing equipment found in the premises of the Daily Record.

Thereafter the Manila Herald Publishing Co. Inc. and Printers, Inc., filed with the Sheriff separate third-party claims, alleging that they were the owners of the property attached. Whereupon, the Sheriff required of Quirino a counterbond of ₱41,500 to meet the claim of the Manila Herald Publishing Co., Inc., and another bond of ₱59,500 to meet the claim of Printers, Inc. These amounts, upon Quirino's motion filed under Section 13, Rule 59, of the Rules of Court, were reduced by the court to ₱11,000 and ₱10,000 respectively.

Unsuccessful in their attempt to quash the attachment, on October 7, 1950, the Manila Herald Publishing Co., Inc. and Printers, Inc. commenced a joint suit against the Sheriff, Quirino and Alto Surety & Insurance Co. Inc., in which the former sought (1) to enjoin the latter from proceeding with the attachment of the properties above mentioned and (2) ₱45,000.00 damages. This suit was docketed as Civil Case No. 12263.

Whereas Case No. 11531 was being handled by Judge Sanchez or pending in the branch of the Court presided by him, Case No. 12263 fell in the branch of Judge Pecson who issued a writ of preliminary injunction to the Sheriff directing him to desist from proceeding with the attachment of the said properties.

After the issuance of that preliminary injunction, Antonio Quirino filed an *ex-parte* petition for its dissolution, and Judge Simeon Ramos, to whom Case No. 12263 had in the meanwhile been transferred, granted the petition on a bond of ₱21,000.00. However Judge Ramos soon set aside the order just mentioned on a motion for reconsideration by the Manila Herald Publishing Co. Inc. and Printers, Inc. and set the matter for hearing for October 14, then continued to October 16.

Upon the conclusion of that hearing, Judge Ramos required the parties to submit memoranda on the question whether "the subject matter of Civil Case No. 12263 should be ventilated in an independent action or by means of a complaint in intervention in Civil Case No. 11531." Memoranda having filed, His Honor declared that the suit, in Case No. 12263, was "unnecessary, superfluous and illegal" and so dismissed the same. He held that what Manila Herald Publishing Co., Inc., and Printers, Inc., should do was intervene in Case No. 11531.

The questions that emerge from these facts and the arguments are: Did Judge Ramos have authority to dismiss Case No. 12263 at the stage when it was thrown out of court? Should the Manila Herald Publishing Co., Inc., and Printers, Inc., come as intervenors into the case for libel instead of bringing an independent action? And did Judge Pecson or Judge Ramos have jurisdiction in Case No. 12263 to quash the attachment levied in Case No. 11531?

In Case No. 12263, it should be recalled, neither a motion to dismiss nor an answer had been made when the decision under consideration was handed down. The matter then before the court was a motion seeking a provisional or collateral remedy, connected with and incidental to the principal action. It was a motion to dissolve the preliminary injunction granted by Judge Pecson restraining the Sheriff from proceeding with the attachment in Case No. 11531. The question of dismissal was suggested by Judge Ramos on a ground perceived by His Honor. To all intents and purposes, the dismissal was decreed by the court on its own initiative.

Section 1 of Rule 8 enumerates the grounds upon which an action may be dismissed, and it specifically ordains that a motion to this end be filed. In the light of this express requirement we do not believe that the court had power to dismiss the case without the requisite motion duly presented. The fact that the parties filed memoranda upon the court's indication or order in which they discussed the proposition that the action was unnecessary and was improperly brought outside and independently of the case for libel did not supply the deficiency. Rule 30 of the Rules of Court provides for the cases in which an action may be dismissed, and the inclusion of those therein provided excludes any other, under the familiar maxim, *inclusio inius est exclusio alterius*. The only instance in which, according to said Rules, the court may dismiss upon the court's own motion an action is, when the "plaintiff fails to appear at the time of the trial or to prosecute his action for an unreasonable length of time or to comply with the Rules or any order of the court."

The Rules of Court are devised as a matter of necessity, intended to be observed with diligence by the courts as well as by the parties, for the orderly conduct of litigation and judicial rules which gives the court jurisdiction to act.

We are of the opinion that the court acted with grave abuse of discretion if not in excess of its jurisdiction in dismissing the case without any formal motion to dismiss.

The foregoing conclusions should suffice to dispose of this proceeding for certiorari, but the parties have discussed the second question and we propose to rule upon it if only to put out of the way a probable cause for future controversy and consequent delay in the disposal of the main cause.

Section 14 of Rule 59, which treats of the steps to be taken when property attached is claimed by any other persons than the defendant or his agent, contains the proviso that "Nothing herein contained shall prevent such third person from vindicating his claim

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 success 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.