

**RAMCAR, INCORPORATED, PETITIONER, VS. DIONISIO DE LEON,
JUDGE OF FIRST INSTANCE OF MANILA, ET AL., RESPONDENTS.***G.R. No. L-1329. May 15, 1947*

Ponente: PERFECTO, J.

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On December 26, 1946, petitioner initiated a civil action against Daniel Francisco, Ulysses S. Tread, Jr., and Antonio Lloret, by filing a complaint for damages with the Court of First Instance of Manila, praying that defendants be sentenced to pay the sum of P5,000, value of a stolen taxicab, P500, a price offered through the newspapers to anyone who could point the whereabouts of said taxicab, plus P50 per day as the average minimum daily income of the car and the costs of the suit, and that, pending all proceedings, attachment of the properties of defendants be ordered, upon such bond and in the amount that the court may deem proper to fix.

Plaintiff alleged that he owns, among other taxicabs, a Renault car with motor No. 36428, painted black and white and provided with a taximeter, the total value of which is P5,000, and that about December 2, 1946, it was stolen from the parking place in front of the premises of plaintiff at 1049 R. Hidalgo, Manila, and after many days of fruitless search, an offer of P500 through the newspapers was made to anyone who could point to its whereabouts, and that said car, already in dismantled condition, was found in and recovered from the possession of defendants, who confessed to the representative of plaintiff and, the police authorities as being the authors of the theft of said car and of dismantling it to pieces, making it completely unserviceable and a total loss. In support of the petition for the issuance of a writ of attachment, plaintiff alleged that defendants were concealing their properties and were about to dispose of them with intent of defrauding their creditors, including plaintiff.

Two days later, on December 28, an information for the theft of the above described taxicab and based on the same facts alleged in the complaint, was filed with the court of first instance against the said three defendants.

On January 2, 1947, after petitioner had filed a bond in the amount of P5,000, a writ of attachment was issued against the properties of defendants. On January 14, 1947, defendant Daniel Francisco filed a petition praying for the dismissal of the complaint and for the setting aside of the writ of attachment. On January 27, 1947, defendant Ulysses S. Tread, Jr., moved for the suspension of the time within which to file a responsive pleading to the complaint and to dissolve the writ of attachment. On January 30, 1947, respondent judge issued an order denying the dismissal of the complaint prayed for by Daniel Francisco, but granted its petition to set aside the writ of attachment against him. On February 3, the same judge granted the petition of defendant Ulysses S. Tread, Jr., dated January 27, 1947. On February 20, 1947, respondent judge denied the motion for reconsideration filed by plaintiff who, consequently, filed with this Supreme Court the petition which is now under our consideration, praying that the orders of respondent judge of January 30 and February 3 and 20, 1947, be declared null and void and that the writ of attachment of January 2, 1947, be declared valid and in force.

Respondent judge set aside the writ of attachment of January 2, 1947, upon the theory that it was improperly issued because at the time of its issuance the information in the criminal case had already been filed, the theory

being based on the lower court's interpretation of Section 1 of Rule 107 in which it is read:

"(b) Criminal and civil actions arising from the same offense may be instituted separately, but after the criminal action has been commenced the civil action cannot be instituted until final judgment has been rendered in the criminal action;

"(c) After a criminal action has been commenced, no civil action arising from the same offense can be prosecuted; and the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered."

From the provisions of Rule 107 it is clear that, unless there is a waiver of civil action or reserve of the right to initiate it expressly, criminal action always carries the civil action for recovery of liability arising from the offense charged; that when criminal action has been commenced before the civil action, the latter cannot be instituted until final judgment has been rendered in the former; that when the civil action has been commenced before the criminal action, the former shall be suspended upon the institution of the latter and until final judgment is rendered in the same; that, generally, extinction of the criminal action does not carry with it extinction of the civil; and that final judgment rendered in a civil action in absolving defendant from civil liability is no bar to a criminal action.

The above-quoted subsection (c) is the one directly applicable to the facts in this case, although it should not be interpreted as an isolated provision, but in conjunction with the rest of Rule 107. Said subsection enjoins that no civil action arising from the same offense can be prosecuted after a criminal action has been commenced, and if the civil action has been instituted before the criminal, it "shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered." The question is whether, under such injunctions, the lower court was, after the filing of the information in the criminal case, ipso facto deprived of the power to issue preliminary and auxiliary writs, such as preliminary injunction, attachment, appointment of receiver, fixing amounts of bonds to be filed, and other processes of similar nature, none of which goes into the merits of the case.

Under the subsection in question, the civil action undergoes a procedural freezing. But, in the same way that in physical congelation not all manifestations of life are wiped out, the procedural freezing in question does not have the effect of wiping out all manifestations of the existence of the suspended civil action. Marmots and certain species of bats, including pipistrels, when hibernating in burrows and caves during winter, offer the appearance of immobile corpses or simple lumps of ice. But within the lifeless appearance that deceives human perception, because metabolism, heart-beat rate, breathing and body temperature drop so low, there lies the mysteriously latent vitality that, when hibernation is over, will permit those animals to run with surprising agility and to soar high in cross-country flying. Suspension is not termination. Suspension is not final ending, is not destruction, is not death. The suspended civil action continues to be alive. Only its evolution to maturity is temporarily stopped. Only it has to bide time. In the meantime, while it is waiting to be tried and decided on the merits, it may avail itself of the ancillary processes which, expressly authorized by law, will permit it to accomplish its purposes efficaciously, and may defend itself against bad faith, fraud and other evil practices, intended to make nugatory the relief sought by it and to defeat the ends of the administration of justice. If those ancillary processes cannot be resorted to during the suspension, there is no sense in the rule providing only for suspension, when its effect is to kill the action. We cannot subscribe to the idea that the authors of the subsection in question, in providing for the suspension of the civil action during the life of the criminal action, had the purpose of crippling to death the civil action, but lacked the honesty of saying so in an outright manner, seeking rather the hypocritical method of concealing their purpose under a deceitful word.

No one should forget that civil action for recovery of civil liability arising from an offense has always deserved

the concern of the law. The Revised Penal Code, although it is supposed to deal only on criminal offenses, contain an express provision reserving to offended parties such civil action. To make effective that right of recovery of civil liability, Section 2 of Rule 106 grants to the offended party the right to commence a criminal action through a complaint, and Section 16 of the same rule guarantees to the offended party the right of intervention in criminal action, either personally or by attorney. Rule 107 has been drafted to further guarantee to the offended party the right of recovery above-mentioned.

When no civil action is expressly instituted, according to subsection (a) of Section 1 of Rule 107, it shall be impliedly jointly "instituted with the criminal action." That means as if two actions are joined in one as twins, each one complete with the same completeness as any of the two normal persons composing a twin. It means that the civil action may be tried and prosecuted, with all the ancillary processes provided by law. Such was the idea of the Supreme Court in *United States vs. Heery* (25 Phil., 600) where, besides affirming the criminal judgment rendered therein, it ordered the record returned to the lower court "for the further purpose of completing the civil branch of the case." Therefore, within the criminal action, with which the civil action is "impliedly instituted," the offended party may obtain the preliminary writ of attachment. There is no logic in denying that right to the plaintiff, when the civil action is separately instituted.

The orders of the respondent judge dated January 30 and February 3, 1947, having been issued upon a wrong interpretation of subsection (c) of Section 1 of Rule 107, and no intimation to the contrary having been made, we should assume that, without said wrong interpretation, the writ of attachment was issued because the plaintiff was, under the facts and the law, entitled to its issuance, and that there was the duty of the lower court to issue it.

For all the foregoing, the orders of the respondent judge of January 30 and February 3, 1947, are set aside, and the writ of attachment of January 2, 1947, is maintained, unless and until lifted through a proper counter-bond that the defendants may file or for any other reason recognized by law. Costs shall be taxed against respondents.

Paras, and Bengzon, JJ., concur.

Tuason, J., concurs in the result.

PARAS, J.:

I certify that Mr. Justice Padilla voted with the majority.

DISIDENTE

PABLO, M.:

El recurrente en esta causa original de certiorari y mandamus presento dos acciones en el Juzgado de Primera Instancia de Manila: Primera, la accion civil No. 1429, reclamando de los demandados Daniel Francisco, Ulysses S. Tread, Jr. y Antonio Lloret el pago del importe del taxicab Renault hurtado, segun la demanda, por ellos, y la presento en 26 de diciembre de 1946. Segunda, una querella por hurto (causa criminal No. 1849) contra los mismos individuos el 28 del mismo mes. El 2 de enero de 1947 el Honorable Juez recurrido, a petition del recurrente, expidio una orden de embargo preventivo contra los bienes de los demandados; el 30 de enero de 1947 denego la mocion de sobreseimiento presentada por Daniel Francisco y revoco la orden de embargo preventivo contra sus bienes; en 3 de febrero revoco la orden de embargo preventivo expedida contra los bienes de Ulysses S. Tread, Jr. y el 20 de febrero denego la mocion de reconsideracion presentada por el demandante. Por tales motivos, el recurrente (que es el demandante en la causa civil y ofendido en la causa criminal) acudio a este Tribunal pidiendo que las ordenes del Hon. Juez recurrido, dictadas en la causa civil el 30 de enero y de 3 y 20 de

febrero de 1947, sean declaradas nulas y de ningun valor y que la orden de embargo preventivo de 2 de enero de 1947 sea declarada valida y en vigor.

Fundandose en el articulo 1.º de la Regla 107, la mayoría revoca las ordenes del Juez recurrido de 30 de enero y de 3 de febrero y declara valida la orden de 2 de enero de 1947 (la de embargo preventivo contra los bienes de los demandados en la causa civil y acusados en la causa criminal).

No puedo concurrir con esta opinion.

El articulo citado dice lo siguiente:

"(c) After a criminal action has been commenced, no civil action arising from the same offense can be prosecuted; and the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered;"

La disposicion del parrafo (c) es clara. No permite la presentacion de una causa civil despues de presentada ya la causa criminal, disposicion parecida a la del articulo 114 de la Ley de Enjuiciamiento Criminal Española. (Orbeta contra Sotto, 58 Jur. Fil., 548.) Pero si, como en el caso presente, se ha presentado ya con anterioridad una causa civil, tal causa debe ser suspendida en el estado en que se encontraba al presentarse la causa criminal y no se actuara sobre ella hasta que recaiga sentencia final en la causa criminal. De acuerdo con esta disposicion, el Juzgado no debio haber dictado la orden de embargo preventivo contra las propiedades de los demandados en 2 de enero: ya no podia actuar en la causa civil despues de presentada la querella en 28 de diciembre de 1946. Tal actuacion, que es contraria a la disposicion expresa del Reglamento, carece de fuerza y efecto. Si el Juez recurrido, reconociendo el error en que incurrio, revoco su orden de 2 de enero, no ha hecho mas que restablecer la causa civil en el estado en que se encontraba al presentarse la accion criminal. No abuso de su discrecion, ni obro en exceso de su jurisdiccion.

En el asunto de Eraña contra Vera y Josephine Panzani (74 Phil., 272), este Tribunal ha declarado ya que ha abandonado la doctrina sentada en los asuntos de Estados Unidos contra Namit (38 Jur. Fil., 984), y Pueblo contra Moreno (60 Jur. Fil., 729)—que en causas criminales no es procedente expedir embargo preventivo,—y categoricamente concluyo: "But this ruling is predicated fundamentally upon the theory that preliminary attachment is a purely statutory remedy and there was then no clear legal provision making it applicable in criminal proceedings. All doubts on this question have, however, disappeared upon the promulgation of the new Rules of Court wherein, by clear authority of Rule 124, section 6, above quoted, a criminal court having jurisdiction over the civil action arising from the offense charged, is now permitted to issue all the auxiliary writs necessary to carry such jurisdiction into effect. A similar legal principle was recognized before in scattered provisions of law or decisions (see Act No. 136, section 19; Revised Administrative Code, section 145-G; Act No. 190, section 610; Shioji vs. Harvey, 43 Phil., 333, 344), applicable only in some courts and in certain cases, and does not seem to cover the question now before us. Now, it is made general and applicable in all cases and in all courts provided the requirements therein specified are present." Lo que hubiera hecho el recurrente fue pedir que el Fiscal presentase una mocion en la causa criminal pidiendo la expedicion del embargo preventivo correspondiente.

Si la causa civil estaba suspendida por disposicion expresa del Reglamento de los Tribunales, como podia el Juzgado dictar en ella una orden de embargo preventivo? Expedir tal orden es actuar: no es suspender, no es dejar el expediente en el estado en que se encontraba al presentarse la querella. Es infringir abiertamente la letra y el espiritu de la disposicion procesal.

El articulo 1.º de la Regla 107 dispone que "(a) when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the

offended party expressly waives the civil action or reserves his right to institute it separately." El recurrente no pidió el sobreseimiento de la causa civil; se puede suponer que reservó el derecho de continuar con la causa civil, en cuanto se haya dictado sentencia final en el expediente criminal de acuerdo con el reglamento. Sin embargo, en vez de respetar el status quo del expediente civil al tiempo de presentarse la querrela urgio, al prestar la fianza correspondiente, la expedición del mandamiento de embargo preventivo Este Tribunal no puede dar fuerza y vigor a la orden de embargo preventivo, expedida en contravención de la expresa disposición del artículo 1.º, párrafo (c) de la Regla 107, que era per se nula y de ningún valor. En *Orbeta contra Sotto*, supra, este Tribunal dijo: "* * * las actuaciones civiles incoadas en contravención de las disposiciones de la Ley de Enjuiciamiento Criminal Española antes citadas carecen de fuerza y efecto."

Se debe denegar la petición.

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