FRANCISCO MILITANTE III, PLAINTIFF-APPELLANT, VS. ANTERO EDROSOLANO AND MANUEL BELLOSILLO, DEFENDANTS-APPELLEES.

G.R. No. L-27940. June 10, 1971

Ponente: FERNANDO, J.

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FERNANDO, J.:

What is involved in this appeal from an order of dismissal by the lower court is whether or not plaintiff has a cause of action to nullify a judgment obtained, so it was alleged, through collusion, enabling defendant, now appellee Manuel Bellosillo, to acquire on execution the property of the other defendant, now appellee Antero Edrosolano, who was thus afforded a means of escape from satisfying whatever liability might be imposed on him in a then pending case filed by plaintiff for damages for a breach of contract of carriage. A lawsuit is intended precisely to assure that a right may be vindicated. Thereby the party to whom is imputed the correlative duty could, if indeed called for, be made to comply with what is incumbent upon him or to respond in damages. The aggrieved party is thus entitled to be heard by a court of justice. There is greater need for adherence to this principle if, as must be assumed in this case for a motion to dismiss presupposes the hypothetical admission of the facts alleged, defendants did make a mockery of the solemn processes of the law, converting a judicial proceeding into an instrument of injustice against the plaintiff. At the very least then, he should not be denied the opportunity to prove that such a deplorable turn of events did transpire. The lower court was of a different mind. It sustained the motion to dismiss, unable to discern a cause of action in his favor. What it did lacks justification. We reverse.

Plaintiff, in his complaint dated January 3, 1967, after setting forth the jurisdictional facts, alleged that in a pending case filed on September 6, 1965,[1] he sued for damages arising from a breach of contract of carriage defendant Antero Edrosolano.[2] He was able to secure an order of preliminary attachment on the property of such defendant on January 18, 1966.[3] When the Provincial Sheriff of Iloilo, however, sought to attach equipment used by him as a public service operator, defendant Bellosillo filed a third-party claim asserting that he had previously bought, on February 28, 1966, all of the former's the TPU equipment.[4] Upon inquiry, plaintiff learned that on or about January 22, 1963, defendant Bollosillo filed a case for collection against defendant Edrosolano in the sum of Forty Five Thousand Pesos (P45, 000.00), purportedly arising from a promissory note dated February 1, 1960, executed by the latter.[5]

Then came the crucial allegation that the aforesaid civil case was based on a fictitious cause of action because such promissory note was without lawful consideration whatsoever.[6] Defendant Bellosillo, according to the complaint, was not and could not be in a position to loan such amount to his co-defendant Edrosolano.[7] Immediately upon the filing of the said civil case on January 22, 1963, defendant Edrosolano received on the same date copy of the complaint and summons although it was not coursed through the Office of the Provincial Sheriff or the City Sheriff which is the usual and standard procedure in the service of summons and other processes and writs.[8] Inspite of receipt by said defendant of the complaint and summons, he did not file any answer and allowed his co-defendant Bellosillo to take judgment against him by default, one being rendered on

February 25, 1963.[9] Considering these facts, it was plaintiff's assertion that the decision rendered on February 25, 1963 in the aforesaid civil case is null and void ab initio the filing of the said civil case being a clever and fraudulent scheme perpetrated by the defendant Edrosolano with the blessings of his co-defendant for the purpose of defeating or evading money claims against him arising from his business as a public carrier operator not only in the City and Province of Iloilo but in the Island of Panay.[10] Moreover, while the decision was rendered on February 25, 1963, it having attained finality thirty (30) days from receipt by defendant Edrosolano who did not appeal from the said decision, it was only on January 19, 1966 when defendant Bellosillo caused the execution thereof after plaintiff had already instituted his civil case for damages against defendant Edrosolano and an order for issuance of preliminary attachment issued, apparently in their fraudulent desire to evade the satisfaction of whatever civil liability of the defendant Edrosolano might be adjudged in favor of plaintiff.[11] In the aforesaid execution sale, on February 7, 1966, defendant Edrosolano allowed without protest the acquisition of all the units he possessed as a public service operator, conservatively valued at Three Hundred Thousand Pesos (P300,000.00), for the supposed adjudged claim of only P52,000.00.[12] Plaintiff would impress on the lower court then that unless the aforesaid decision was revoked and declared a nullity together with all the proceedings had therewith, defendant Edrosolano would be able to evade his responsibility as a public service operator and his civil liabilities as such operator to the general public as well as the passengers and his creditors including plaintiff.[13] His prayer was for declaring such judgment null and void ab initio and for damages.[14]

To the above complaint, the response of the defendants was a motion to dismiss filed on February 6, 1967 on the ground that it stated no cause of action, as there was no showing of a right on the part of the plaintiff and the violation thereof by defendants. It is their contention that whatever right may be possessed by plaintiff, "same is still expectant and contingent, it being solely dependent upon the final judgment that may be rendered by the Court in the aforesaid Civil Case No. 6838 in which said writ of attachment was issued and claimed by herein plaintiff to be basis of his right to annul the judgment rendered in other Civil Case No. 6216. That is, if judgment is rendered in his favor. But the possibility of it also being dismissed eventually in favor of therein defendant Edrosolano (one of the herein defendants) is not at all remote * * *. These contingencies are always true in every case."[15] The concluding paragraph of such motion reads: "Hence, until and unless said Civil Case No. 6838, upon which lies and rests the right of herein plaintiff to seek annulment of that judgment in Civil Case No. 6216 is finally deter-mined and adjudged by the court, the latter has no legal ground to claim now he has already such right. And having none, no cause of action for the present exists against herein defendants."[16] Then, on February 24, 1967, came the order of dismissal, the lower court holding "that the essential requisites of a cause of action are not present in plaintiff's complaint."[17] It thus sustained the theory of defendants that, there being no judgment as yet in favor of the plaintiff, he could not be said to have suffered any damage when his action was filed on January 3, 1967.

The appeal was duly taken to this Court on a question of law, namely, the correctness of the order of dismissal based on the finding that the complaint did not state a cause of action. The appeal of plaintiff, as noted, is meritorious; there was a conspicuous failure on the part of the lower court to abide by the authoritative doctrines.

1. The maintenance of the rights under any legal system calls for the appropriate remedy in the event of their disregard. The party who is thereby injured is entitled to redress. The courts exist for that purpose. He has, in the technical language of the law, a cause of action if by what defendant does or fails to do there is disrespect shown for any of his legal claims.[18] The judiciary is expected then to exercise the utmost care and circumspection in passing upon a motion to dismiss on the ground of the absence thereof lest, by its failure to manifest a correct appreciation of the facts alleged and deemed hypothetically admitted, what the law grants or recognizes is effectively nullified. If that happens, there is a blot on the legal order. The law itself stands in disrepute.

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There is need, therefore, for a judicious appraisal of the circumstances which, according to plaintiff's complaint, provided the basis for his suit. It would be a plain departure from what has been so consistently held by this Court if, as was done by the lower court, the response to the assertion of a legal right violated was one of indifference. Nor could it find justification in the pretext that his complaint would be proper only if he would be successful in a pending suit for damages. By then it may be too late, his victory good only on paper. What cannot be denied in the face of his complaint is that if the judgment based on collusion between the defendants would not be set aside, then any hope of recovery, not only on the part of plaintiff, but of any other creditor similarly situated, would indeed be futile.

No decision has been cited; and none can be found which, on the above facts, would justify a holding that no cause of action was shown. For the doctrine consistently adhered to is to avoid the likelihood of plaintiff's recourse to the courts for the satisfaction of his just claims being rendered nugatory. While not precisely in point, what was set forth in Adamos v. J.M. Tuason and Co.[19] bears repeating. In the language of Justice Makalintal, who penned the decision: "It is a well-settled rule that in a motion to dismiss based on the ground that the complaint fails to state a cause of action, the question submitted to the court for determination is the sufficiency of the allegations in the complaint itself. Whether those allegations are true or not is beside the point, for their truth is hypothetically admitted by the motion. * * * So rigid is the norm prescribed that if the court should doubt the truth of the facts averred it must not dismiss the complaint but require an answer and proceed to hear the case on the merits. (Republic Bank v. Cuaderno, L-22399, March 30, 1967)."[20] Such a doctrine goes back to a 1914 decision, Paminsan v. Costales,[21] where it was held: "The test of the sufficiency of the facts found in a petition to constitute a cause of action is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same, in accordance with the prayer of the petition."[22] Certainly on the facts alleged in the complaint, a valid judgment in favor of plaintiff could be rendered.

2. More specifically, the view entertained by the lower court in its order of dismissal that an action for annulment of judgment can be availed of only by those principally or secondarily bound is contrary to what had been so clearly declared by this Court in the leading case of Anuran v. Aquino,[23] decided in 1918. It was emphatically announced therein: "There can be no question as to the right of any person adversely affected by a judgment to maintain an action to enjoin its enforcement and to have it declared a nullity on the ground of fraud and collusion practiced in the very matter of obtaining the judgment when such fraud is extrinsic or collateral to the matters involved in the issues raised at the trial which resulted in such judgment; * * *."[24] Such a principle was further fortified by an observation made by this Court through Justice Ozaeta in Garchitorena v. Sotelo.[25] These are his words: "The collusive conduct of the parties in the foreclosure suit constituted an extrinsic or collateral fraud by reason of which the judgment rendered therein may be annulled in this separate action. (Anuran v. Aquino and Ortiz, 38 Phil., 29) Aside from the Anuran-Aquino case, innumerable authorities from other jurisdictions may be cited in support of the annulment. But were there not any precedent to guide us, reason and justice would compel us to lay down such doctrine for the first time."[26]

WHEREFORE, the order of dismissal of February 10, 1967 by Judge Valerio V. Rovira is set aside and this case is remanded to the lower court for appropriate proceedings in accordance with this opinion. With costs against defendants.

Makalintal, Zaldivar, Teehankee, Villamor, and Makasiar, JJ., concur.
Dizon, J., concurs in a separate opinion.
Concepcion, C.J., and Reyes, J., concur in the opinion of Mr. Justice Dizon.
Barredo, J., concurs in a separate opinion.
Ruiz Castro, J., took no part.

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[1] Civil Case No. 6838 of the Court of First Instance of Iloilo.

[2] Complaint, Record on Appeal, par. 3, p. 2.

[3] Ibid, par. 4, p. 2.

[4] Ibid, par. 5, pp. 2 and 3.

[5] Ibid, par. 7, p. 3. The complaint was docketed as Civil Case No. 6216 of the Court of First Instance of Iloilo.

[6] Ibid, par. 8, p. 3.

[7] Ibid, par. 9, p. 4.

[8] Ibid, par. 10, p. 4.

[9] Ibid, par. 11, p. 4.

[10] Ibid, pars. 12 and 13, pp. 4 and 5.

[11] Ibid, par. 14, p. 5.

[12] Ibid, par. 15, pp. 5 and 6.

[13] Ibid, par. 16, p. 6.

[14] Ibid, petitory part of Complaint, p. 7.

[15] Motion to Dismiss of Defendant, Record on Appeal, pp. 12 and 13.

[16] Ibid, p. 13.

[17] Order of Dismissal, Record on Appeal, p. 30.

[18] According to Ma-ao Sugar Central Co. v. Barrios: "A cause of action is an act or omission of one party in violation of the legal right or rights of the other; and its essential elements are legal right of the plaintiff, correlative obli-gation of the defendant, and act or omission of the defendant in violation of said legal right." 79 Phil. 666, 667 (1947). This decision is cited with approval in Remitere v. Vda. de Yulo, L-19751, Feb. 28, 1966 16 SCRA 251; Casenas v. Rosales, L-18707, Feb. 28, 1967, 19 SCRA 462; Espinosa v. Belda, L-17988, March 31, 1967, 19 SCRA 715.

[19] L-21957, Oct. 14, 1968, 25 SCRA 529.

[20] Ibid, pp. 533-534.

[21] 28 Phil. 487 (1914). Paminsan v. Costales has been cited subsequently in the following cases: De Jesus v. Belarmino, 95 Phil. 365 (1954); Dimayuga v. Dimayuga, 96 Phil. 859 (1955); Marabiles v. Quito, 100 Phil. 64 (1956); Wise & Co., Inc. v. City of Manila, 101 Phil. 244 (1957); A.U. Valencia & Co. v. Layug, 103 Phil. 747 (1958); Garcon v. Redemptorist Fathers, L-23510, May 30, 1966, 17 SCRA 341; Republic Bank v. Cuaderno, L-22399, March 30, 1967, 19 SCRA 671; La Suerte Cigar & Cigarette Factory v. Central Azucarera del Danao, L-23017, May 23, 1968, 23 SCRA 686.

[22] Ibid, p. 489.

[23] 38 Phil. 29 (1918).

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[24] Ibid, pp. 32-33.

[25] 74 Phil. 25, 30 (1942). Ramirez v. Baltazar, L-25059, August 30, 1968, 24 SCRA 918, may likewise be cited.

[26] Ibid, p. 30.

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CONCURRING OPINION

BARREDO, J.:

I concur in the judgment overruling the order of dismissal of the lower court impugned in this appeal, but my reasons for so holding are quite different from those discussed by our able colleague, Justice Fernando, in the opinion he has written for the Court, hence this separate opinion. Frankly, I do not see enough cause to express apprehension that by the questioned action of the trial judge there might be a "blot in the legal order" and that "the law itself stands in dispute." Much less do I share the reproof that His Honor's "response to the assertion of a legal right was one of indifference." Indeed, I am afraid there is very little ground to hold that the lower court's reasoning in upholding appellee's motion to dismiss is altogether without basis. A cursory reading of the appealed order of dismissal would readily reveal that the trial judge merely sustained appellee's basic position in their motion that appellant's action is premature, since the basis of the latter's alleged cause of action is only a levy on attachment, not of execution, and, besides, that it is only after the action to annul the judgment in the allegedly collusive suit referred to in the complaint has been successfully prosecuted to final judgment that said appellant could be entitled to question the validity of the sale on execution in favor of appellee Bellosillo. In other words, His Honor did not consider at all whether or not there are sufficient allegations in the complaint to warrant a conclusion that indeed the judgment in question was a collusive one and instead, he simply held that appellant's claim of preference in favor of the levy on attachment in his suit against appellee Edrosolano over the sale on execution in favor of appellant Bellosillo had yet no reason for being until after the judgment under which said sale had been made has been set aside by another final judgment and that, moreover, appellant could have preserved, on the other hand his claimed priority had he filed the required counterbond against appellee Bellosillo's third-party claim. Evidently, His Honor's frame of reference was the alleged priority of the attachment over the sale on execution and not the alleged nullity of the judgment from which the sale on execution drew its life. Otherwise stated, the trial judge failed to grasp the thrust of appellant's apparent theory in his complaint; what His Honor saw as appellant's cause of action was nothing more than an assertion that since he had a levy on attachment in his favor, necessarily, the sale on execution in favor of appellee Bellosillo must be set aside, particularly, because it is the result of a suit only alleged to be but not yet finally adjudged as col-lusive. Undoubtedly, such a view may not be entirely correct, but my point is that it is far from manifesting indifferrence to a rightful claim properly alleged. I do not find any attempt of the trial judge to so ignore or disregard any elemental facts alleged to constitute appellant's supposed cause of action to warrant the reminder from Adamos and Republic Bank, both cited in the main opinion, that a motion to dismiss assumes hypothetically, at least, the facts alleged in the complaint. Withal, as I shall discuss a little later, the cases of Anuran v. Aquino and Garchitorena v. Sotelo likewise referred to in the main opinion have very little, if any, relevant application to the present case.

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I say that His Honor's view of appellant's cause of action may not be entirely correct because my own analysis of the circumstances portrayed in appellant's complaint convinces me that the real fault in the framing of appellant's complaint lies in the apparently secondary significance it has given to the superior legal efficacy of the levy on attachment on the properties herein involved in his favor over the execution sale in favor of appellee Bellosillo. While, as I have already observed, the court a quo used the said levy on attachment as its main frame of reference, it fell short of realizing that since appellant's levy on attachment was made prior to the levy on execution, it impressed upon the properties thus levied on an effective lien that subjects the sale on execution in favor of appellee Bellosillo to the results of the action filed by appellant as Civil Case No. 6838 against appellee Edrosolano. (See concurring and dissenting opinion of Justice Moreland in Kuenzle & Streiff v. Villanueva, 41 Phil. 611, 622-670)[1] Thus, the more efficacious and speedier cause of action I read in appellant's complaint here in question is that the defendants in the court below, which perhaps should have included the sheriff, have not accorded due respect to the levy on attachment in his favor, and on the basis of this cause of action, I hold that the relief to which appellant is entitled is for the court to order that the sheriff restore the said levy on attachment and continue the same even without the need of any counterbond against the third-party claim of appellee Bellosillo, unless there is anyway by which the sale on execution in favor of said third-party claimant and appellee Bellosillo may be publicly recorded as being subject to the levy on attachment and the results of the action in favor of appellant.

It is my considered opinion that this approach to appellant's case is a closer approximation to the remedial rules applicable thereto. Besides, I feel that this view will afford appellant safer and faster relief than the theory of collusion which the main opinion capitalizes. In this way, the roadblock I perceive consisting of what I believe is still an unsettled question of law may perhaps be avoided, since it may not be imperative to pass upon it here.

In this connection, the trial court ended its consideration of the order of dismissal in question thus:

> "An action for annulment of a judgment is subsidiary and can be availed of by those principally or secondarily bound. It is essential that the claim of the plaintiff in Civil Case No. 6838 should have existed before the cause of action in Civil Case No. 6216."

thereby drawing the following ruling from the main opinion:

> "More specifically, the view entertained by the lower court in its order of dismissal that an action for annulment of judgment can be availed of only by those principally or secondarily bound is contrary to what had been so clearly declared by this Court in the leading case of Anuran v. Aquino, (38 Phil. 29 [1918] decided in 1918. It was emphatically announced therein: 'There can be no question as to the right of any person adversely affected by a judgment to maintain an action to enjoin its enforcement and to have it declared a nullity on the ground of fraud and collusion practiced in the very matter of obtaining the judgment when such fraud is extrinsic or collateral to the matters involved in the issues raised at the trial which resulted in such judgments; x x x." (Ibid, pp. 32-33.) Such a principle was further fortified by an observation made by this Court through Justice Ozaeta in Garchitorena v. Sotelo (74 Phil. 25, 30 [1942]. Ramirez v. Baltazar, L-25059, August 30, 1968, 24 SCRA 918, may likewise be cited.) These are his words: 'The collusive conduct of the parties in the foreclosure suit constituted an extrinsic or collateral fraud by reason of which the judgment rendered therein may be annulled in this separate action. (Anura v. Aquino and Ortiz, 38 Phil. 29) Aside from the Anuran-Aquino case, innumerable authorities from other jurisdictions may be cited in support of the annulment. But were there not any precedent to guide us, reason and justice would compel us to lay down such doctrine for the first time." (Ibid., p. 30)

I prefer to look at His Honor's above holding with more liberality, if not with a more accurate analysis of its real intended import. As I understand it, all that the trial judge must have meant to say was that inasmuch as the breach of the contract of carriage alleged by appellant took place in 1965 whereas the judgment being assailed as

collusive was rendered and had become final way back in 1963, appellant cannot allege he was among those intended to be prejudiced thereby. Truth to tell, I would like to reserve my opinion on this point for a more appropriate occasion, specially because it seems to me that the circumstances alleged in the complaint under review, numerous and impressive as they are, do not sufficiently establish, even if assumed to be true, a clear case for the annulment of a judgment by collusion. I feel that, as the said complaint stands, there are not enough allegations to specifically relate the appellant's cause of action in Civil Case No. 6838 to the motivations of Civil Case No. 6216. This should explain why I find little application of Anuran and Garchitorena here. My impression is that in citing these cases, the main opinion assumes, without the least attempt to show the correctness of such an assumption, that the herein complaint alleges all the essential facts which constitute the elements of the cause of action in dispute regarding a collusive suit.

I, therefore, vote to overrule the order of dismissal appealed from and to order the remand of this case to the lower court for the corresponding further proceedings, including possible amendments by appellant to further strengthen his theory of collusion, with the specific instruction that the sheriff who made the levy on attachment in favor of appellant in Civil Case No. 6838 be ordered impleaded as defendant, consistent with the above opinion, with costs against appellees.

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[1] While somehow the majority opinion discussed the relation between the lien of an attachment and the preference of credits under the Civil Code, (under the Code of Civil Procedure, Act 190, and the old Civil Code), Justice Moreland had this to say of said discussion:

"I agree that the decision should be reversed. I cannot agree, however, to the discussion of the questions taken up and considered by the court in the majority opinion and decided. The whole subject of preference is covered and the field of attachments is fully occupied, when there is, in my opinion, nothing in the case which warrants it. The only question presented is this: Is an attaching creditor entitled to apply the proceeds of the sale of the property attached to the payment of the judgment obtained in the action in which the attachment was levied as against a mere judgment creditor of the same defendant whose judgment was obtained after the attachment was levied but before judgment on the action? To determine this question there was no necessity of discussing the whole law of preferred credits, or of attempting the impossible task of uniting or harmonizing it with the law of attachments; for, it is conceded by the court that, whether the attachment is considered a lien or a preference, it was to be preferred to a mere judgment subsequently obtained which had no relation to or connection with the property attached. There was no need, therefore, to attempt to exhaust the subject of preference; and particularly there was no reason for seriously emasculating, indeed, completely destroying, the essential character of the attachment as known, recognized and established by courts and jurists from the earliest times. This is clear not only from the fact already stated, viz, that the attachment was entitled to priority no matter whether it were considered a lien or a preference, but also from the fact that the court, after it had emasculated attachments in general, and this one in particular, held that it was still superior to the judgment of the defendant. Certainly, if it was superior after emasculation, it was before; and it is queer logic which leads one to destroy the essential and individual character of a right in order to demonstrate that it is superior to some other.

"Moreover, there was no necessity for such a discussion as the opinion contains, with the uncertainty and confusion which will follow in several branches of the law, for another reason: If the court had simply followed the plain language of the Act relating to attachments that would have ended the matter at once. Its provisions are clear and the rights of the attaching creditor are set out so explicitly and plainly that to escape the obvious effects of the Act one must give it a construction and interpretation so strained and unnatural and so in violation of all precedent as to destroy the Act itself - and, as a result, to make a statute instead of apply a statute. A mere reading

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of the provisions of the law of attachments as it is found in Act No. 190 of the Philippine Commission should end the controversy instantly. Its pro-visions are as clear as language can make them and are simplicity itself. Moreover, so far as securing to the attaching creditor his rights in the pro-perty attached is concerned, they are mandatory." (41 Phil. 622-623.)

Additionally, he analyzed the main opinion thus:

"I want, first of all, to point out what the court holds in this case and the train of argument by which it arrives at its conclusion. As I have said, I find no fault with the bare finding that the attachment must be upheld. With that I agree. That was a resolution of the question, and the sole question, before the court. But the court decides much more than that; and this, together with the style and character of the argument found in the opinion, is what I object to. Near the end of the opinion the court holds that an attachment lien is 'subject to all x x x statutory preferences by which such property is affected at the time of the levy x x x.' This was clearly unnecessary to a decision of the question presented. The judgment in this case was subsequent to the levy of the attachment and, therefore, the situation which would have arisen if it had been prior to the levy was not presented. But I would not object so seriously to the obiter dictum if it contained a correct statement of the law with which it deals. When, however, it is not only obiter but wrong also, I not only feel constrained to dissent but to register that dissent as well. Nothing is more objectionable than erroneous obiter dicta." (Ibid, p. 624.)

The burden of the separate opinion is that the lien of attachment is superior to the codal preference of a judgment as a credit under the Article of the Civil Code then which is now Art. 2244 of the new Civil Code. This view differs from what he considered obiter dictum in the main opinion, since the latter recognized the priority of attachments only over after-acquired judgments. In the case at bar, the issue of preference is between appellant's attachment levy and the judgment alleged to be collusive which was rendered and had become final two years before appellant's levy. This case could, therefore, be the opportune one for this Court to chose definitely for doctrinal purposes between the main opinion and that of Justice Moreland, but inasmuch as We are ordering its remand to the lower court for appropriate proceedings, it would be more fitting to settle the issue in the event it comes back to Us after its trial on the merits.

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CONCURRING OPINION

DIZON, J.:

The undersigned concurs with the majority opinion penned by Mr. Justice Enrique M. Fernando, for the reason hereinafter set forth.

Appellant's complaint was dismissed by the lower court upon the ground that the facts stated therein do not constitute a cause of action in his favor. The undersigned disagrees.

A Cause of Action has been defined as a delict or wrong committed by one party in violation of the right of another.

On the other hand, a writ of Preliminary Attachment is a provisional remedy issued, upon an order of the court where an action is pending, to be levied upon the property or properties of the defendant therein, the same to be

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held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant. Likewise it is settled in this jurisdiction that the effect of a writ of Preliminary Attachment levied upon the property or properties of the defendant is to create or impose thereon a lien in favor of the attaching creditor in relation to the purpose for which the writ was issued.

In the light of the foregoing, the undersigned believes that the facts alleged in appellant's com-plaint are sufficient to constitute a cause of action in his favor and against the appellees.

The "right" of appellant is obviously the lien that he had acquired upon the properties of appellees by reason of the writ of Preliminary Attachment levied thereon in connection with Civil Case No. 6838 mentioned in the majority opinion. On the other hand, the delict violative of, or that tends to violate that right is the writ of execution and/or the execution sale of the attached properties had in connection with the judgment rendered in Civil Case No. 6216 likewise mentioned in the majority opinion, clear as it is that any right derived from said execution sale either actually violates or tends to render ineffective the lien acquired by appellant upon said properties.

Of course, whether appellant will be able to substantiate or establish the right he claims, or whether, in law, such right is superior to any other right derived from or acquired as a result of the execution sale mentioned heretofore, is a matter dependent upon the conclusion that the trial court might arrive at after a trial on the basis of the facts established by the evidence.

PREMISES CONSIDERED, I vote to reverse the ap-pealed decision.

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