

**ISABELO ARTACHO, PLAINTIFF, VS. TAN CHU CHAY, JAS. C. JENKINS,
AS JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN, AND
ANTONIO SISON, AS SHERIFF OF SAID PROVINCE, DEFENDANTS.**

G.R. No. 4855. July 30, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

This is an original action of certiorari in this court. The defendants demurred to the complaint and the case is now before us for resolution of this demurrer.

It appears from the complaint that judgment was entered in the Court of First Instance of the Province of Pangasinan in favor of the defendant Tan Chu Chay and against the plaintiff Isabelo Artacho, for the sum of P3,430, with interest and costs. This judgment was afterwards affirmed by this court, the case remanded to the Court of First Instance, and execution issued upon the judgment and delivered to the defendant, Antonio Sison, sheriff of the Province of Pangasinan, for service. The sheriff made a demand upon the plaintiff Artacho for the payment of the amount of the judgment, which payment was refused by the plaintiff on the ground, as alleged in the complaint, that, prior to such demand, the debt due from him to the defendant Tan Chu Chay had been legally attached by the sheriff of Manila in a suit brought by a creditor of Tan Chu Chay against the latter in the Court of First Instance of Manila. The defendant Sison reported to the Court of First Instance of Pangasinan the answer of the plaintiff, Artacho, and the judge thereof, one of the defendants, thereupon ordered the issue of a second execution upon the judgment hereinbefore referred to.

The plaintiff then commenced this proceeding in this court and secured a temporary injunction restraining the levy of the execution.

It is alleged in the complaint that, in ordering the issue of a second execution, the defendant-judge exceeded his jurisdiction and that such order was absolutely void. This contention can not be sustained. The Court of Pangasinan had jurisdiction of the case of Tan Chu Chay against the plaintiff Artacho, jurisdiction both of the parties and of the subject-matter, and the mere fact that some creditor of Tan Chu Chay had attached the debt due from Artacho to the former did not oust that court from its jurisdiction to proceed with the case. (See among other cases decided by this court: *Hubert & Guamis vs. Sweeney*, 4 Phil. Rep., 473; *Somes vs. Crossfield*, 8 Phil. Rep., 284; and *Yambert vs. McMicking*, 10 Phil. Rep., 95:)

Whether, in order to prevent a double payment, the plaintiff can maintain an action in the Court of First Instance under section 120 of the Code of Civil Procedure, or whether he can accomplish that result by some other proceeding in that court, it is not for us now to decide; it is sufficient to say that the present action of certiorari can not be maintained.

The demurrer is sustained, and the plaintiff is given five days in which to amend his complaint. If no such amendment is presented within that time, the clerk, without any further order of this court, will enter a final judgment for the defendants with costs. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

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