

[G.R. No. 25. December 07, 1901]

**JUAN PIÑEYRO, PLAINTIFF AND APPELLANT, VS. JUAN UTOR ET AL.,
DEFENDANTS AND APPELLEES.**

D E C I S I O N

WILLARD, J.:

The plaintiff obtained a preliminary attachment, presenting for that purpose a document in which it appears that a debt exists in his favor from the defendants. In the complaint filed later in accordance with article 1393 of the Law of Civil Procedure he did not seek to collect the debt but prayed for the rescission of the contract of sale from which the debt had arisen. The court below dissolved the preliminary attachment. The question which must be resolved is the following: What is the nature of the complaint which must be filed in conformity with the said article 1393? We are of the opinion that it should be a complaint for the collection of the debt and not one for the rescission of the contract. The article which confers upon the Courts of First Instance the authority to order preliminary attachments says that this may be done when it is sought to secure the payment of a debt. (Art. 1379.) Justices of the peace, according to the same article, can order a preliminary attachment if requested at the time of filing a complaint in which the payment of a debt is sought. The same article which confers such authority apparently limits its exercise to actions dealing with the collection of a debt.

To secure the attachment the moving party must present a document which discloses the existence of the debt. (Art. 1382.) In an action for the rescission of a contract the case may be, and most frequently is, that there is no debt.

No attachment can be put into effect if in making of the levy the person against whom it is ordered pays the sums which are claimed. (Art. 1387.) In an action for rescission how is this amount to be determined, and in such action what right has the defendant to make any such payment?

In an action to rescind a sale the sole object which the plaintiff seeks is the possession of the thing sold; but if he should be entitled to an attachment in such an action then it could not be limited to the thing sold but might be extended to all of the property of the defendant, both real and personal.

In actions which concern the ownership of certain classes of property, section 2 of Title XIV gives to the plaintiff the right to ask for the judicial administration or receivership of the property during the pendency of the litigation. We are not aware of the existence of any other law under which the plaintiff in an action for rescission has the right to ask that the property in litigation be placed in the custody of the court in which the action is being tried during the pendency thereof.

The plaintiff not having presented a complaint for the collection of a debt, the order of the trial court is in accordance with law and is hereby affirmed with costs taxed against the appellant. It is so ordered.

Arellano, C. J., Torres, Cooper, and Mapa, JJ., concur.

Ladd, J., did not sit in this case.
