

The defendant moved to dissolve the injunction on the ground that it was issued improvidently, contrary to law and equity, and not just or convenient.

*James Muir, Q.C.*, for defendant. This is an attempt to procure equitable execution prior to judgment. The courts will not in respect of a simple contract restrain a defendant from disposing of his assets, or appoint a receiver or grant an injunction in order to hold moneys or goods to enable plaintiff to retain assets out of which to make his judgment if subsequently recovered. The provision for garnishment or attachment before judgment was a purely statutory remedy. To extend these provisions as asked by plaintiff would be practically legislation by the Court. There are no authorities for granting injunction or receiver under similar circumstances.

*C. C. McCaul, Q.C.*, for plaintiffs, admitted that defendant's grounds were sound in English law, but our law differs from that in England. The Court will grant equitable relief by way of receiver where money cannot be reached by ordinary garnishee process. In England money cannot be garnished or property attached prior to judgment. In the N.W.T. a simple contract creditor has the right at law to garnish moneys prior to judgment in liquidated demands (J.O. 368) or to attach personal property where the debtor has attempted to sell or dispose of same intending to defraud his creditors generally or plaintiff in particular (J.O. 394). If the plaintiffs were able to show that moneys were already in the receivers' hands payable to Swann, they would be able to garnish the receivers and attach the moneys in their hands. It is only because the assets are in the hands of the receivers and not in the defendant's hands that plaintiffs cannot avail themselves of s. 394, and attach the goods themselves. The plaintiff therefore asks the Court to extend the equitable principle underlying the doctrine of equitable execution (subsequent to judgment) in England to an analagous state of facts arising in this country before judgment.

SCOTT, J.: If the plaintiffs had recovered judgment against the defendant in this action I think it will be conceded that upon disclosing these facts he would be entitled to this injunction, but there does not appear to be any authority which goes the length of holding that he is entitled to any such remedy before obtaining judgment.

It is, however, contended on behalf of the plaintiff that the principle upon which in England such relief is granted after judgment applies with equal force here, to cases where such relief is applied for before judgment, and the ground for such contention is the fact that by the law of England, no provision is made for the attachment by a creditor before judgment of a debt due to the debtor, that here debts may be attached by the creditor before he obtains judgment, and his remedies are thus extended beyond those possessed by him in England, and that, as the courts in England have interfered to protect him in the remedies possessed by him there, the court here should interfere to protect him in the more extensive remedies possessed by him here.

In this case, by reason of the fact that no moneys payable to the defendant have yet reached the hands of the receivers there is no debt which can be attached. What the plaintiff obtains in effect by this injunction is that the