

North-West Territories.

SUPREME COURT.

NORTHERN ALBERTA JUDICIAL DISTRICT.

PACIFIC INVESTMENT COMPANY v. SWANN.

Interim injunction—Equitable execution in England and in N.W.T.—Execution before judgment—Court not empowered to extend statutory remedies—Receiver—Discretion—New modes of enforcing payments.

The assets of a ranch company were, in a suit of *Barter v. Swann*, placed in hands of a receiver for the purpose of winding up the company and dividing proceeds of assets between Barter and defendant herein. The receiver, being about to sell the assets for the purpose as alleged of paying the defendant his share of the proceeds to enable him to defeat his creditors, including the plaintiff, an injunction was granted by Rouleau J., restraining defendant from receiving any such proceeds until after the trial of this action.

Held, 1. That no injunction could be granted until after judgment obtained.

2. The right of a creditor to have a receiver is distinct from his right to attach debts due to the debtor, and is a means of enabling the judgment creditor to realize on the debtor's property unattainable by ordinary execution. The attachment of debts is an ordinary mode of execution and the extension of that by giving the right to a creditor before judgment does not authorize an extension in such a case to other remedies.

3. That the fact of a judge granting an injunction when no jurisdiction to do so does not prevent another judge from setting aside his order.

Order made dissolving the injunction.

[REGINA, JAN. 15, SCOTT, J.]

This was an application to dissolve an interim injunction granted ex parte to the plaintiff until trial. The plaintiffs were a company incorporated and doing business in Utah, U.S. They sued the defendant on an English judgment for \$12,000 on calls alleged to be due on stock in their company. The defence consisted mainly in putting plaintiffs to the proof of their claim. The defendant's only assets it appears from affidavit were his interest in the Quorn Ranch Co., the assets of which had been vested in two receivers, of whom defendant was one by a decree in an action brought by one Barter against defendant. By the decree the amount realized on the assets was to be divided equally between Barter and the defendant.

It was alleged on affidavit filed in the present action that the receivers were about secretly to dispose of the assets, and pay over to the defendant his share to enable him to defeat his creditors, the plaintiff in particular. The plaintiff's advocates, though they had at various times advised the receivers, had been purposely kept in ignorance of the contemplated sale. The plaintiffs thereupon applied for and obtained ex parte an interim injunction until trial, restraining the receivers in *Barter v. Swann* from paying over any money to the defendant.