

is no authority for such a course in an action of tort. If the plaintiff is a creditor before judgment, he can sue on behalf of himself and all creditors to attack a fraudulent transfer. If the plaintiff is a judgment creditor, he can proceed by execution to secure himself upon the debtor's property. But if the litigation is merely progressing, and the status of creditor not established, it is not the course of the Court to interfere quia timet, and restrain defendant from dealing with his property, until the rights of the litigants are ascertained. See Parker on Frauds on Creditors, p. 211; Holmsted and Langton's Jud. Act, p. 80; Newton v. Newton, 11 P. D. 11, 13; Campbell v. Campbell, 29 Gr. 252, 254. Injunction not continued; costs to be disposed of when the action is determined.

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NOVEMBER 4TH, 1903.

DIVISIONAL COURT.

RE CONFEDERATION LIFE ASSOCIATION AND  
CLARKSON.

*Will—Executors—Power to Sell Lands—Power to Exchange—Vendor and Purchaser.*

Motion (referred by agreement to a Divisional Court) under the Vendors and Purchasers Act in respect of an objection taken to the title by the purchaser. The question arose upon the will of Elizabeth Trolley, dated 6th June, 1881, by which she devised her real estate to be equally divided between her children when the youngest attained 21, with a power to the executor "to sell or dispose of any or all of the above real estate, should he think it in the interest of my children to do so, and should he pay off any debt or debts now standing against such real estate, the same to be deducted from such sale or sales."

C. P. Smith, for vendors.

M. H. Ludwig, for purchaser.

THE COURT (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.) held that under this power the executors had no authority to exchange the lands of the testatrix for other lands. *Philps v. Harris*, 101 U. S. Sup. Ct. 370, and *Winters v. McKinstry*, 1 Man. L. R. 296, referred to.