should be appointed. No case precisely in point was cited to us, and I have not been able to find any. It cannot be said that the authorities in cases more or less analogous are consistent with each other or that they can all be reconciled. Upon the whole, the weight of authority appears to be decidedly in favour of the view taken by the Divisional Court, that this is not a proper case for the appointment of a receiver. The contract for the paving and maintenance is a single contract, and the money is only divided or apportioned for the purpose of payment. It is significant, also, that the final certificate is not to issue until the expiration of the 10 years, and then only for the amount (if any) then found to be due. It is not at all certain that any part of the 10 per cent. retained by the corporation will ever be due or payable to the defendant, in which case the action of the Court in appointing a receiver would be wholly barren and fruitless.

Of the cases that have been referred to, I think that of In re Johnson, [1898] 2 I.R. 551, bears the closest analogy in its facts to the present; and in that case an Irish Divisional Court held that it was not a proper case for the application of the principle of equitable execution.

I am of opinion that the appeal should be dismissed.

JULY 13TH, 1911.

MOOREHOUSE v. PERRY.

Money Lent—Conflict of Testimony—Credibility of Parties—Finding of Fact—Appeal—Chattel Mortgage—Illegal Transaction—Pleading.

Appeal by the defendant from the judgment of RIDDELL, J., ante 92, in favour of the plaintiff in an action for money lent, and dismissing the defendant's counterclaim.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

I. F. Hellmuth, K.C., for the defendant.

D. Inglis Grant, for the plaintiff.

The judgment of the Court was delivered by GARROW, J.A.:—

. . . The dealings between the parties . . . were evidently not conducted along business lines, with the usual result that in