

defendant's interest in the proceeds of the property in hands of the receivers is bound until such times as there shall be moneys of the defendant in the hands of the receivers which can be attached, or until the plaintiff obtains judgment, and is thereby placed in a position to apply for a receiver of the defendant's interest in the proceeds. I think it will be conceded that he is not entitled to an injunction to obtain the first object alone.

Then is he entitled to obtain the second object? I think not. In my view the right of a creditor to have a receiver appointed by way of equitable execution is something distinct and apart from his right to attach debts due to the debtor. They are different modes of execution. It is true that the former remedy appears to have arisen from the fact that the debtor may be entitled to a fund or property which cannot be reached by ordinary execution, but they are distinct remedies. This is shown by the provision in Ontario respecting attachment of debts, which enacts that any claim or demand arising out of trust or contract which can be made available under equitable execution may be attached. It may be that if such a provision had been in force here the plaintiff would have been entitled to the injunction as granted if it were necessary to protect him. (The learned Judge then referred to *Annual Practice*, 1895, p. 924: *Wills v. Luff*, 38 Ch. D. 197; *Re Shepherd*, 43 Ch. D. 131.)

I think a reasonable deduction from the authorities is that it is a means of enabling the judgment creditor to realize upon the property of the debtor which cannot be reached by the ordinary modes of execution. The attachment of debt is one of those ordinary modes of execution and the extension of that remedy does not, in my view, imply the extension of any other remedy. If it implied, for instance, the like extension of the remedy of equitable execution, I see no reason why it should not also imply the like extension of the ordinary remedy by execution against lands or goods. A number of authorities were cited on the argument to show that the Courts would not at the instance of a creditor interfere to prevent a debtor disposing of his estate even if it were shown that the creditor was thereby being defrauded, and it was conceded by the plaintiff's counsel that such was the case, but, if the plaintiff is right in his contention, I see no reason why a creditor in such case would not be as much entitled to the interference of the Court in his behalf as the plaintiff is in the present case.

It was also contended that my brother Rouleau having exercised discretion in granting the injunction I should not interfere with his exercising of it. I admit that the contention is sound, if the granting of the injunction was a matter within his discretion, but I do not think it was. Although s. 8 of s. 25 of the Judicature Act of 1893 provides that an injunction may be granted in all cases in which it shall appear to the court to be just or convenient, yet it was held in *Harris v. Beauchamp Brothers* (1894) 1 Q.B. p. 801, that those words do not refer to an arbitrary or unfettered discretion on the court, and do not authorize the court to invent new modes of enforcing payments in substitution for the ordinary modes. In my opinion the granting of the injunction was not within the discretion of my brother Rouleau.

It was also contended on behalf of the plaintiff that the court would not permit its officers, viz., the receivers, to deal with the defendant's property in a