ORDE, J., in a written judgment, said that on the 20th November, 1920, an order was made by Middleton, J., appointing a receiver of all the undertaking and assets of the defendants mortgaged or charged under a certain mortgage trust deed to secure the defendants' bonds. The plaintiffs were the trustees for the bondholders, and this action was brought to realise the security.

The Toronto Hockey Club, as judgment creditors of the defendants, moved to vacate the receivership order, and the motion was dismissed by Latchford, J. (ante 236). An application, under Rule 507, for leave to appeal from the order of Latchford, J., was now made.

It was alleged by the applicants that the mortgage trust deed, in so far as it purported to mortgage or charge the chattels and other personal assets of the defendants, was void as against the applicants under the provisions of the Bills of Sale and Chattel Mortgage Act. But, assuming that to be the case, their remedy as creditors was not by way of motion to set aside the receivership order, but by some proceeding to realise upon their judgment, such as execution and seizure by the Sheriff, followed, if a contest should arise, by interpleader. The situation was in substance no different from that of a chattel mortgagee who had taken possession under a security alleged to be defective or void.

It was suggested that the proceedings to enforce the security had been the result of collusion between one of the bondholders and the trustees, the plaintiffs, because the proceedings had been taken at his instance. But how could the term "collusion" be applied to anything which took place between the trustees and one of the cestuis que trust having for its object the enforcement of the rights of the bondholders? It might as well be suggested that there could be collusion between a principal and his own agent.

It was suggested that the order of Latchford, J., or an order refusing leave to appeal from it, might operate as an estoppel against the applicants in any proceedings they might take, upon the principle of res judicata. That cannot be so, because the order in question does not deal with the merits of the matter at all, but merely with the procedure adopted by the applicants to enforce their judgment.

There appeared to be no reason to doubt the correctness of the order of Latchford, J., and the application for leave must be refused. The refusal of leave is based upon the assumption that the merits have not been dealt with; and, so far as there is power so to provide upon this application, the refusal is without prejudice to any of the rights of the applicants.

*Application refused with costs.*