

Lumber Co. denied that the boom timber and logs in question were, at the time of the seizure, the property of the claimants, subject to the liens and assignments held by the Bank of Ottawa as against the contestants.

The interpleader order gave the claimants possession of the property seized, upon payment by the claimants to the sheriff of \$1,500 to stand as security in lieu thereof.

The money was paid to the sheriff, and the property was restored to the claimants. The order directed the sheriff to pay the money, less his costs and expenses, into Court to abide further order.

FALCONBRIDGE, C. J., found the issues in favour of the respective claimants, the plaintiffs in the issues.

N. W. Rowell, K.C., for defendants, execution creditors.

W. M. Douglas, K.C., for plaintiffs.

The judgment of the Court (MOSS, C. J. O., OSLER, MACLENNAN, GARROW, MACLAREN, J. J. A.), was delivered by

MOSS, C. J. O.— . . . From the evidence it appeared that in 1902 the execution debtor, E. F. Kendall, was the holder of a permit, issued by the Crown timber agent at Rat Portage, entitling him to cut and remove from certain lands of the Crown a quantity of railway ties between 30th April, 1902, and 30th April, 1903. In the month of October he entered into a contract with the Canadian Pacific R. W. Co. to furnish them with 30,000 ties on certain terms as to delivery and payment. To enable him to carry out the contract, he applied to the Bank of Ottawa for advances, which the bank agreed to make, on receiving an assignment of the moneys payable under the contract, and other securities.

On 12th November, 1902, E. F. Kendall and Thomas Robinson entered into partnership in the business of tie manufacturers, to be carried on upon the lands comprised in the permit, and to include the carrying out of the contract with the Canadian Pacific R. W. Co. The agreement of partnership was at first oral, but, in December or January following, it was, at the instance of the Bank of Ottawa, reduced to writing and signed by the parties, and a certificate of the partnership was duly registered.

On 15th November the partners proceeded to the lands, and Robinson was left in control, in accordance with the partnership agreement. He established the camp and commenced to cut the ties, and got them out on the ice on an arm of the Lake of the Woods. In the spring they were boomed and finally towed to Norman's Bay, where they were seized by the sheriff. The boom timber and logs were cut by the partnership for the purposes of rafting the ties, and were properly taken for that purpose. The Bank of Ottawa made