

in as wide and full a manner as though he were an officer of the company. It appears that he was one of its provisional directors, and there has been no meeting held for the regular organization of the company. Under these circumstances, I think, the motion must succeed. Reynolds is ordered to attend and be further examined at his own expense, and to pay the costs of this motion.

PRIVY COUNCIL.

NOVEMBER 19TH, 1912.

McPHERSON v. TEMISKAMING LUMBER CO. LTD.

Timber—Crown Timber Act—R. S. O. 1897, ch. 32—License to Cut—Execution against Licensee—Seizure of Cut Timber—Rights under License Exigible—Interest in Land—Notice.

An interpleader issue to determine the ownership of certain saw-logs seized by plaintiffs as execution creditors of A. McGuire & Co., and claimed by defendants as assignees of the execution debtors. It was admitted that defendants had notice of the executions at the time of the assignment, but it was argued that a timber license and the rights, privileges and interests of the licensee thereunder, as long as the timber stood, were unattachable by an execution creditor.

TEETZEL, J., *held* (18 O. W. R. 319, 811; 2 O. W. N. 553, 854), that the execution of plaintiff McPherson must prevail over defendants' claim, as defendants' assignors were enjoined, by order of the Court, from assigning at the time of such alleged assignment, but that the executions of the other defendants could not attach as the property was not exigible.

Can. Pac. Rwy. Co. v. Rat Portage Lumber Co., 10 O. L. R. 273; 5 O. W. R. 473, followed.

COURT OF APPEAL, *held* (20 O. W. R. 13; 3 O. W. N. 36), that the injunction referred to in the judgment of the learned trial Judge could not operate any further than as notice to defendants and that, therefore, defendants must prevail as against all the plaintiffs, the property in a timber license not being exigible.

Judgment of TEETZEL, J., reversed in part, and action dismissed with costs.

PRIVY COUNCIL *held*, that under the Crown Timber Act, the position of the holder of a timber license is: (1) that he is the possessor of an asset in the nature of land; (2) that that asset is, accordingly, subject to execution; (3) that the execution does not interfere with the property of the debtor or his power to assign or transfer, subject only to the security of the execution creditor not being impaired; (4) when there is cut timber on the land at the date of execution, that timber is, of course, the instant subject of seizure; (5) should the timber be cut subsequent to the date of the execution, it is then instantly attached, and the execution cannot be defeated because the cutting operations had been made by an assignee or transferee to whom, in the interval between the laying on of the execution and the cutting of the timber, the licensee had transferred his rights, and (6) the only exception to this is the case of a title being acquired by a third party in good faith, and for valuable consideration, and without notice of the writ having been delivered to the sheriff and remaining unexecuted.

Certain dicta in *Can. Pac. Rwy. Co. v. Rat Portage Lumber Co.*, 10 O. L. R. 273; 5 O. W. R. 473, disapproved of, and the case distinguished.

Glennwood Lumber Co., Ltd. v. Phillips, [1904] A. C. 408, approved.

Appeal allowed, and judgment for plaintiffs entered with costs in all Courts.