

1862. question, in *Owen v. Body*, and grounded their decision entirely upon that difference.

Bank of
Toronto
v.
Eccles.

Fifteen years had elapsed between the judgment given in *Owen v. Body* and those cases, which afforded ample time for considering the soundness of the decision in *Owen v. Body*, first, as to the legal inference, that the executing creditors would, in that case, have made themselves partners with the trustees in the business to be carried on; and next, as to the consequence of such a provision, that being unjust and unreasonable in itself, it invalidated the assignment.

Judgment

The only doubt which the courts seem to have had in either of the latter cases was, as to the effect of the assignment before them in creating a partnership business. If it had done so, they seemed quite prepared to have followed *Owen v. Body* in holding the assignment to be invalid; and while they pointed out what they considered to be essential differences between the terms of the assignments, they did not seem to doubt that upon the question of partnership or no partnership, *Owen v. Body* had been rightly decided. They intimated no dissent from that judgment on either ground, but they held it not applicable in the cases before them, on account of the difference of the terms of the assignments.

The late Lord Chief Justice *Jervis*, of the Common Pleas, in giving judgment in *Janes v. Whitbread*, explained the only ground of the difference. "As to the first point," he said, "the court granted the rule expressly for the purpose of having the deed contrasted with that upon which the case of *Owen v. Body* had been decided." Upon examining that case, however, he remarked, "I am of opinion that it is not applicable to the present, for there the deed contained minute provisions, investing the trustees with power to carry on the trade, for which purpose they were authorised to

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