

words of the Execution Act. These words have been already cited. The subject of execution being land, in the broad sense already referred to, there seems no reason to question the comprehension within that term of timber licenses, in accordance with the principle set forth by Lord Davey in the *Glenwood Case*.

It seems not improbable that a judgment in the above sense would have been pronounced by the learned Canadian Judges had they not felt themselves foreclosed by this authority. In their Lordships' view, however, the construction of the statute is clear. Under the Act the position of the holder of a timber license, is (1) that he is the possessor of an asset of 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) and 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. It seems to their Lordships that if these principles are violated the way is opened up to the defeat of the execution creditor's rights, and, as the circumstances of this case very plainly shew, to transactions of a questionable nature under which debtors would endeavour to avoid their just obligations.

The principles now set forth, are in entire accord with familiar law. That law was expressed thus by Baron Parke in what still stands as the leading case of *Samuel v. Duke* (3 M. & W. 622: "Now it is perfectly clear to me, both upon the decided cases and the reason of the thing, that if a writ of execution has been delivered to the sheriff, the defendant may convey his property, but that the sheriff has a right to the execution notwithstanding the transfer . . . the right . . . speaks from the time of the delivery of the writ upon the receipt of which the sheriff is to levy.