

any of the timber embraced in the Crown timber permit until it had been severed from the soil." But the contention was that, once severance of the timber took place, the execution attached, notwithstanding any agreements in respect of the timber made before the severance. The parties do not appear to have entered into actual contest upon the question of the real nature of the right of the timber licensee, in so far as the land itself was concerned, or in so far as affected the comprehensive rights of a licensee in land. In these circumstances their Lordships do not feel that the true issue under the existing Execution Act of Ontario has been fully dealt with. It is interesting to observe from the dictum of the learned Chief Justice Moss, that "if an agreement is not entered into with a colourable purpose, or with an intent to defeat or defraud creditors, as by a mere pretended partnership, but is entered into with the *bonâ fide* intention of forming a partnership and carrying on a business, it is not open to attack at the instance of creditors." If this dictum points to the impossibility of defeating the execution creditor's rights by the colourable device of partnership or other contract effecting a change of title, so formed as to defeat the execution, their Lordships agree with it. But the right of an execution creditor in no case interferes with the proprietary interests of the execution debtor, except to the effect that, while the execution debtor is free to deal with his property, the property so dealt with remains subject to the rights of the execution creditor therein; these last remain unaffected and unimpaired. The circumstances of the present case in this regard, and the dealings of A. McGuire and Company, with their rights as licensees, while the execution stood, will be presently referred to. But when the learned Chief Justice states that "the interest transferred by the debtor is not one exigible under a writ of execution, and is not affected by any lien or charge arising therefrom; there is nothing to affect the debtor's interest, and by no process could he be compelled to use it for the benefit of his creditors," their Lordships find themselves unable to agree with these propositions. In practice they would seem to operate greatly to the diminution of the credit otherwise available to timber licensees, and they would manifestly destroy the security for advances upon timber lands, however valuable, until actual severance of the timber. But this consideration might, of course, be counter-balanced by others, and in any view would have to yield to the fair construction of the