

Court case and a case in the Surrogate Court with reference to the question now before me.

The motion to quash must therefore be granted.

Maxwell & Maxwell, St. Thomas, solicitors for plaintiff.

J. A. Robinson, St. Thomas, solicitor for defendant.

MAY 6TH, 1902.

DIVISIONAL COURT.

CLEMENS v. BARTLETT, FRAZIER, & CO.

Execution—Agreement to Work Farm and Share Profits—Partnership — Right of Sheriff to Seize Interest of one Partner in grain, but not to Take it out of Possession of Other Partner.

Ovens v. Bull, 1 A. R. 62, followed.

Appeal by defendants from judgment of ROBERTSON, J., in favour of plaintiff in an interpleader issue as to the right to the proceeds of certain grain and chattels seized by the sheriff of the county of Waterloo. The defendants are execution creditors of John H. Thamer, who absconded from the country in May, 1901. The trial Judge found as facts that in 1894 the plaintiff owned two farms and had an auction sale of about \$2,500 worth of chattels, etc. Of these Thamer, then 21 years of age, plaintiff's nephew and adopted son, and who was living with him, bought \$900 worth, but did not pay for them, and during the subsequent years worked one of the farms on shares with the plaintiff, who remained in possession; that at the time Thamer left he owed plaintiff \$3,400; that certain grain had been held over and not sold, but the balance had been sold and proceeds appropriated by Thamer; and that at the time of the seizure the plaintiff, being a partner and in possession, was entitled to the grain, and that the goods had always been the property of plaintiff under his agreement with Thamer, who pursuant to it had from time to time replaced worn out articles.

F. Arnoldi, K.C., for defendants.

E. P. Clement, Berlin, for plaintiff.

THE COURT (MEREDITH, C.J., MACMAHON, J., LOUNT, J.) held that the judgment below was right and should be affirmed. The chattels never became the property of Thamer. The agreement constituted the plaintiff and Thamer partners, for, though nothing was said about losses, profits only having been provided for, there being no contrary intention shewn, it amounted to an agreement to share losses: Lindley on Partnership, 5th ed., p. 12 et seq. The