

enabled to defeat the execution creditor's rights and to part with something of value which he found it to his interest to dispose of and a third party found it to his interest to acquire.

This is the true nature of the case before the Board. The subsequent facts, so far as the question now at issue is concerned, are unimportant.

The purchaser at the execution sale was Mr. J. M. Forgie. On making application to the recorder, that official, as mentioned, refused to record the sale deed from the sheriff. Mr. Forgie appealed from that decision to the Mining Commissioner. And he lodged a notice of claim on the 2nd February, 1912, in accordance with the Mining Act. He claimed to be recorded, and further asked that the transfer by the execution debtor Wishart to the respondent Myers of the 17th October, 1911, should be set aside. The ground stated was that the transfer was fraudulently made with the intent to defeat the appellant and the other creditors of Wishart. In the course of the litigation it was agreed, in the language of the Mining Commissioner, that "the question whether or not Wishart's interest in the mining claim was exigible and, if so, whether it should be sold as land or as chattels, should first be disposed of, Mr. Bayne admitting that if either of these points were decided against him, his client's claims must be dismissed."

The case before the Board was accordingly taken upon the footing that the only question to be determined was whether the interest in a mining claim duly recorded, but not yet the subject of a patent, was exigible for a judgment debt due by the claimant. Or in another form—and one of great general importance in the development of industrial enterprise—the question is whether the interest of a mining claimant at this stage of his operations is unavailable as a source of credit for a secured advance. There may be questions as to whether the actual form of sale should have complied with the provisions as referable to land or referable to chattels. But whatever the form of sale adopted, the question is whether the respondents can have any interest which they could set up in conflict with the seizure in execution made before any sale by the judgment debtor.

The principles of law applicable to a case of this character were fully laid down in *McPherson v. The Temiskaming Lumber Company, Limited* (1913, A. C. 145). The