

created in respect of the \$30,000, it would have been necessary to consider whether the relief which the appellants seek could have been obtained by the proceedings then taken, apart from the difficulty due to the fact that the assets of the bank have been realised and distributed among its creditors, and that it has been necessary to make a call upon the shareholders in respect of their double liability, to meet the debts of the bank which its assets were insufficient to pay; and, as there is no fund in existence, I very much doubt the jurisdiction of the Official Referee to make such an order as the appellants seek to obtain. At most he may have had the power under sec. 133 of the Winding-up Act to determine whether or not a trust was created, and, if created, the nature of it. But it is, I think, clear that he had no jurisdiction over the *cy-près* application of the fund; and I incline to the opinion that the petitioner should have proceeded by action, to which the Attorney-General should be a necessary party, and for the bringing of which the leave of the Court should be necessary: sec. 22.

The Attorney-General was a necessary party to the proceedings which the appellants have taken, and up to the time of the argument of the appeal he had not been notified of them, but since the argument he has been communicated with, and has intimated that he is satisfied that judgment should be given without further argument.

JANUARY 12TH, 1914.

MAPLE LEAF MILLING CO. v. WESTERN CANADA  
FLOUR MILLS CO.

*Execution—Fi. Fa. Goods—Seizure of Goods under Writ against Member of Partnership—Claim by Execution Creditor of Partnership—Interpleader Issue—Evidence—Sale to Partnership—Transfer to Individual Partner—Onus of Proof.*

Appeal by the plaintiff company from the judgment of LATCHFORD, J., at the trial of an interpleader issue, finding in favour of the defendant company.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

J. T. White, for the appellant company.

R. McKay, K.C., for the defendants.