

his wife, and that when he sold it he gave the purchase money to her, as it was her own property.

*Held*, that, upon this material, an order for the examination of the wife was properly made.

*Per OSLER, J.A.* : On such an application, the real title of the debtor should not be enquired into or tried ; nor can the transferee resist it merely by asserting that the debtor held the property as agent or trustee. Standing in his name and being dealt with as his own, it was *prima facie* his.

*Per MACLENNAN, J.A.* : The case intended by the Rule is a transfer of the debtor's own property, and not of property which he has dealt with as agent or trustee for another. But where it is a disputed question whether the property was not the property of the debtor, or property in which he had an interest, the Rule ought to be applied.

*Ryckman* for the appellant.

*W. H. Garvey* for the respondent.

Court of Appeal.]

[Oct. 27,

STANDARD BANK OF CANADA v. FRIND.

*Partnership—Rule 876—Judgment against firm—Execution against alleged member of firm—Issue—Amendment.*

The latter part of Rule 876, providing for an application for leave to issue execution, upon a judgment against a firm, against some person as a member of the firm other than those mentioned in s-ss. (b) and (c) of the Rule, applies only where there is in truth a partnership which is bound by the judgment obtained against the firm in consequence of the service of the writ of summons upon one of its members or its manager ; where there is, in fact, no partnership, no one can be bound by a judgment against an abstraction called "a firm" except the person who has been served under the provisions of Rule 266 and who has appeared or pleaded in the action.

And where the wife of the manager of the business of a so-called firm, who was shown to be merely a trustee for him of the profits, was served with process in an action against the firm upon a bill of exchange, and defended,

*Held*, HAGARTY, C.J.O., dissenting, that, as there was, in fact, no partnership, an issue directed to determine whether the husband was liable to have execution issued against him as a member of the firm upon a judgment recovered in an action against the firm must be found in favour of the husband ; and no amendment could be made which would enable the court to determine otherwise.

*Per* HAGARTY, C.J.O. : The husband was, in fact, the firm itself ; his liability for the debts of the firm was established ; and it was not clearly wrong to find that he was a member of the firm. But, at any rate, it was a case in which the power to make all necessary amendments could and should be exercised.

*Marsh, Q.C.*, for the plaintiffs.

*James Parkes and W. G. McKay* for the defendant.