

Marshall, 10 H. L. C. 191 ; Clarke Coombe v. Carter, 36 Ch. D. 348 ; Tailby v. Official Receiver, 13 App. Cas. 523.

There is no reason for saying that the claim of the execution creditors should take effect so as to deprive the partner Robinson of his rights, or prevent him from enforcing them in the name and on behalf of the partnership.

The findings of the Chief Justice are well supported by the evidence in respect of both issues. The property in the ties was shewn to be in Kendall & Robinson and the Canadian Pacific R. W. Co., as purchasers from them, and the property in the boom timber and logs to be in Kendall & Robinson, and these findings resolved the issues in favour of the claimants.

Defendants contended that, in any event, they were entitled to execution against the partnership interest of E. F. Kendall, and that the accounts between the Bank of Ottawa and the partnership shew that some of the money in Court belongs to Kendall, and they asked that it should be so determined or that the matter be put in some train of inquiry for ascertaining the interest of the parties. But the trial was and could be only on the issues directed ; and, even if an amendment had been asked for, which the record does not shew, none could have been made in a case of this kind. Defendants are, doubtless, entitled to execution of the partnership interest of their debtor, and, if the seizure had been made of that interest, with a view only to the sale of that interest, it is not likely that any adverse claim would have been made. But the claim made and maintained throughout was that the property was that of E. F. Kendall alone, and the determination of that issue was all that could be dealt with, and all that can be done here is to decide whether or not that determination was right.

A sale of Kendall's interest in the partnership would not pass the property to the purchaser, but would give him a right to an account of the partnership transactions with a view to ascertaining and realizing the interest of the execution debtor. But there are no means by which such a proceeding can be taken in this matter. The money in Court stands as security for the ties, boom timber, and logs seized by the sheriff. It is not possible to determine in this proceeding whether Kendall is entitled to any, and, if so, how much of it. The materials for such an inquiry are not before the Court.

Defendants' remedy, if any, must be sought in some proceeding in which all questions between the partnership and the execution debtor can be properly inquired into and adjusted.

The present appeal should be dismissed.