

ally, whatever formerly may have been the view of this Court upon the subject.

So the single question for consideration in this case should have been, and is, one of fact—whether the judgment in the Yukon Court was obtained by fraud.

From the whole evidence adduced in this case, it appears that the plaintiff had a good cause of action, but that he was in doubt as to his real debtor: one McKee had employed him, but apparently McKee was acting for the company who, the defendants say, are the real debtors, or else for the defendants; and these two companies seem to have been in some way related to one another; the one is said to have been the outcome of the other. The plaintiff first threatened McKee with an action, asserting that in any case he was answerable for the debt; subsequently he sued the defendants for it in the Yukon Court, and there recovered judgment for the amount of it against them, in summary proceedings.

It is quite clear that there was no fraud, in the sense of a pretence of a debt which had no existence in fact; nor can I think it proved that there was fraud in the assertion of a debt on the part of the defendants, knowing that they were not the real debtors, or in asserting that they really were, when in truth he did not know whether they were or not; and, however much the plaintiff may have been mistaken in any respect, if at all, as it does not appear to me to be proved that he was dishonest in any of these respects, fraud in obtaining the judgment has not been established; and so the plaintiff was rightly held entitled to succeed.

Whether the judgment in the Yukon Court ought to have been made upon a summary application; and, if so, whether it ought to be opened up now and sent down to a trial in the usual way in view of all the circumstances of the case, especially the subsequently discovered evidence, are questions for the Yukon Courts, where justice between the parties will be done, if they are applied to.

MAGEE, J.A., and LATCHFORD and LENNOX, JJ., concurred.

*Appeal dismissed.*