

defendant company and the defendant Henry Knight as preferential within the meaning of the Assignments and Preferences Act, R.S.O. 1014 ch. 134, sec. 5.

The actions were tried together, without a jury, at Toronto.  
 D. Inglis Grant, for the plaintiffs.  
 A. G. Slaght, for the defendants.

MASTEN, J., in a written judgment, found as facts that on the 25th November, 1915, when the conveyances were made, the defendant Hunt was insolvent and unable to pay his debts as they accrued due and that he was well aware that he was unable to meet his liabilities; that the intent of the grantees was to secure what would be in law a preference; but that the defendant Hunt honestly in his own mind believed that he could pull through if only he were given an opportunity.

Upon these findings the case fell within the principle established by *Craig v. McKay* (1906), 12 O.L.R. 121, 123, and *Long v. Hancock* (1885), 12 S.C.R. 532; and the absence, on the part of the debtor, of an intent to prefer, was fatal to the plaintiffs' claim. The rule suggested by *Garrow, J.A.*, in *Windsor Auto Sales Agency v. Martin* (1915), 33 O.L.R. 354, at p. 367, could not be applied here, there being in fact no intent to prefer.

*Actions dismissed with costs.*

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HERRON BROTHERS LIMITED v. CANADIAN STEWART CO. LIMITED  
 —MASTEN, J.—MAY 10.

*Contract—Supply of Piles for Government Works by Subcontractors to Principal Contractors—Acceptance—Subsequent Rejection by Government Engineer—Property Passing—Deterioration—Account—Reference—Costs.*—The defendants were contractors with the Crown, represented by the Department of Public Works of Canada, for the construction of certain harbour improvements at Toronto. The plaintiffs were subcontractors under the plaintiffs for the supply of certain piles to be used by the defendants in the performance of their contract. The plaintiffs sued for 90 per cent. of the price of piles which they alleged that they had delivered in the months of June and July, 1915. The action was tried without a jury at Toronto. MASTEN, J., in a written judgment, set out the facts and the correspondence between the par-