

*Stephens v. McArthur*, 19 S.C.R. 446; *New Prance and Garrards' Trustee v. Hunting* (1897) 2 Q.B. 19; S.C. sub. nom., *Sharp v. Jackson* (1899) A.C. 419; *Lawson v. McGeoch*, 20 A.R. 464; *Armstrong v. Johnson*, 32 O.R. 35, followed.

Although the amending Act declares that a prima facie presumption of an intent to prefer is to arise from the effect of such a transaction, this does not justify the Court in looking only to the effect and refusing to attach any weight to the proved facts as to the actual intent. The presumption, being only prima facie, may be rebutted by evidence.

*Held*, also, that the Court need not determine whether the defendant was acting bona fide or really anticipated that the other creditors could be arranged with and the business continued, it being only the debtor's mental attitude that should be considered.

RICHARDS, J., dissented on the ground that the security was obtained by deceitful representations of the defendant's agent, and should be set aside on that ground.

Appeal allowed with costs.

*Howell*, K.C., and *Mathers*, for plaintiff. *Ewart*, K.C., and *H. J. Macdonald*, K.C., for defendant.

Full Court.]

[Feb. 15.

MUNICIPALITY OF LOUISE v. CANADIAN PACIFIC R.W. CO.

*County Courts—Jurisdiction—Title to land brought in question—Property in sand and gravel on highways—Costs when action fails for want of jurisdiction.*

This was an appeal from a judgment of a County Court awarding to the plaintiffs damages for the taking by defendants of quantities of sand and gravel from several alleged highways and allowances for roads in the municipality. The plaintiffs' claim was based on s. 615 of R.S.M. c. 100, vesting in each municipality the possession of the public roads within its boundaries, subject to any rights in the soil reserved by the individuals who laid out the same, and upon section 644, sub-section (c), empowering municipalities to pass by-laws for preserving or selling timber, trees, stone or gravel on any allowance or appropriation for a public road.

Counsel for the defendants at the trial disputed the title of the plaintiffs to the sand and gravel on the alleged highways, and claimed that the County Court had no jurisdiction to entertain the action, as a bona fide question of title to land was raised within the meaning of s. 59 of County Courts Act, R.S.M. c. 33.

As to two of the alleged highways, there was no real evidence of prior ownership or dedication by any person. The defendants' track crossed what would have been the lines of two village streets if these had been produced, but the land was in its natural state, unused and unimproved.