

made according to a plan of the block with a line drawn through the centre from east to west, the C.P.R. Co. to have the northern half. The G.T.R. Co. acquired the land but the Government reserved from the grant two acres in the northern part. In an action by the C.P.R. Co. for specific performance of the agreement,

*Held*, affirming the judgment of the Court of Appeal (14 O.L.R. 41), MACLENNAN and DUFF, JJ., dissenting, that the C.P.R. Co. was entitled to one-half of the land actually acquired by the G.T.R. Co. and not merely to the balance of the northern half as marked on the plan. The Court of Appeal directed a reference to the Master in case the parties could not agree on the mode of division.

*Held*, that such reference was unnecessary and that the judgment appealed against should be varied in this respect.

W. Cassels, K.C., and Cowan, K.C., for defendants, appellants. Armour, K.C. and MacMurchy, for respondents.

Ont.]

ROBINSON v. MCGILLIVRAY.

[June 24.]

*Insolvency—Preferential transfer of cheque—Deposit in private bank—Application of funds to debt due banker—Sinister intention—Payment to creditor.*

McG., a merchant in insolvent circumstances, although not aware of that fact, sold his stock-in-trade and deposited the cheque received for the price to the credit of his account with a private banker to whom he was indebted, at the time, upon a overdue promissory note that had been, without his knowledge, charged against his account a few days before the sale. Within two days after making the deposit McG. gave the banker his cheque to cover the amount of the note. In an action to have the transfer of the cheque, so deposited, set aside as preferential and void,

*Held*, affirming the judgment appealed from, 13 O.L.R. 232, that the transaction was a payment to a creditor within the meaning of R.S.O. (1897), c. 147, s. 3, sub-s. 1, which was not, under the circumstances, void as against creditors.

G. C. Gibbons, K.C., for appellants. Meredith, K.C., and Brewster, for respondents.