But this leads to another inquiry, namely, was this a loan by the defendant at all, or was it a loan by Hargraft, with the defendant as a mere figurehead? I have already indicated that, in my view, there was no legal obstacle in the way of a loan from Hargraft directly to the mortgagors; and it may be, if no indebtedness arose in favour of Hargraft, that the defendant could be treated as a trustee for him; but my judgment in no way hinges upon either of these views. The evidence satisfies me that there was in fact and in law an actual bona fide loan of $2,500 from Hargraft to the defendant, with all its ordinary legal incidents, without any string upon it, and without any secret reservations, conditions, or qualifications of any kind. I find, too, that the defendant relied upon what Armstrong told him as to the value and sufficiency of the security, and that he lent this money as his own money, and in good faith, and without knowledge or suspicion that the mortgagors were insolvent or financially embarrassed. Further, it is a fact that up to the time when he decided to go into the transaction, and had said so, he had not even heard that the bank had a claim, and he went into it as a business transaction, although it is not improbable that he felt the flattery of becoming the mortgagee in a large transaction, and appreciated the evident confidence of his banker. It is certainly to be remarked that, as it turned out, there was nothing very big in it for the defendant; but it probably compared favourably with his other mortgage deals; and, as he says, making the mortgage payable on demand was Mr. Armstrong's idea, not his.

Now as to the mortgagors—although their motives may not be very important except as a link, or break, in the chain of good faith. First, then, as to insolvency. There was evidence of debts, but I cannot recall any evidence to shew that on the 14th November, 1912, the mortgagors were unable to pay their debts generally as they became due. Again, offsetting the assets of the firm at that time as a going concern—with the most profitable part of their contract yet to be worked out and drawn upon—against the debts then outstanding, I find it difficult, if not impossible, even now, and certainly I should have found it quite impossible on the 14th November, 1912, to pronounce this firm as then being in insolvent circumstances. I am pretty strongly of opinion that, if the firm had been nursed and enabled to complete their contract, instead of being cut off as they were, even with the bad weather to be reckoned with, they might have made good in the end. This, however, is, as much as anything, for the purpose of following up the question