HON. MR. JUSTICE KELLY. SEPTEMBER 20TH, 1913.

RE CANADIAN GAS POWER & LAUNCHES LIMITED, RIDGE'S CLAIM.

5 O. W. N. 43.

Company — Assignment—Winding-up — Assignment of Promissory Notes to Bank—Collateral Security—Bank Entitled to an Assignment of—Judgment of Master-in-Ordinary—Variation of.

KELLY, J., *held*, that where a company transferred certain notes held by it to a bank, the latter was also entitled to an assignment of any collateral security, such as mortgages, that was given with such notes by the debtor.

Central Bank v. *Garland*, 18 A. R. 438, followed. Judgment of Master-in-Ordinary varied.

Appeal from report of Master-in-Ordinary.

G. L. Smith, for the Bank of British North America.

S. G. Crowell, for the liquidator.

H. C. Macdonald, for Ridge, claimant.

HON. MR. JUSTICE KELLY:—The Master has found, and I think properly, that the bank became the holder for value of Ridge's notes without notice of any defect in the payees' title and is entitled to enforce payment against Ridge. He also held that there was and is no debt due by Ridge to the company (now insolvent) and, therefore, the bank has no right to an assignment of the mortgage made by Ridge to the company as collateral security for the notes. With this latter finding I disagree. Except that the time for delivery was not expressly stated, there was a distinct and definite agreement in writing, signed by Ridge, for the purchase of the launch, for part of the price of which the notes and mortgage were given, a cash payment having been made on account of the contract price. The agreement itself was not before the Master when he had the claim under consideration, although there was evidence of its existence. Had it been produced, his conclusion might have been different. It is now produced, and no exception is taken to it by Ridge's counsel. It expressly provides that the giving of the mortgage is collateral to the notes; and it is clear that the mortgage was given accordingly.

My view is that the Master was in error in ruling that the bank is not entitled to an assignment of the mortgage.