shew that on the 14th of 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 would have found it quite impossible on the 14th of 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 of good faith, and ascertaining the real meaning and purpose of what was done on the 14th of November. I am satisfied that when Morley, at about this time, gave the bank manager a summary of the firm's financial position, shewing a substantial surplus, that he acted in good faith, believing what he stated to be true; and that the mortgage was not executed with an actual intent of preferring or benefiting the bank, but solely for the purpose of extracting Mr. Hargraft from an awkward predicament for which Morley, very properly, felt himself responsible. The result is that the bank neither stands to win nor lose by the decision in this case. Its money was let out without its consent, it was repaid without effort or action upon its part. If the mortgage is void the loss falls upon the mortgagee if he is worth it, if he is not the loss, of necessity, falls upon his creditor. The sole purpose of Mr. Hargraft was to avert personal disaster. Was his action, and the acts of those whom he set in motion, justifiable and legal as against the creditors of Chisholm and Morley? I think what was done was lawful and right. I refused at the trial to add the bank as a party unless an opportunity was given them to defend. The application was renewed upon the argument. I adhered to the view I first expressed and in addition, upon the evidence, can see no purpose in bringing them in.

There will be judgment dismissing the action with costs. *Gibbons* v. *Wilson*, 17 A. R. 1; *Ashley* v. *Brown*, 17 A. R. 500; *Davies* v. *Gillard*, 21 O. R. 431; *Molsons Bank* v. *Halter*, 18 S. C. R. 88; and *Campbell* v. *Patterson*, 21 S. C. R. 645, may be referred to.