I do not think that I should give leave to appeal in either case, as the judgments in review seem to me, if I may say so with deference, clearly right.

The motions will be refused, and the costs will be payable by the telephone company in any event of the litigation.

LENNOX, J. DECEMBER 22ND, 1913.

MAHER v. ROBERTS.

Assignments and Preferences—Chattel Mortgage—Money Advanced to Insolvent Firm to Pay Creditor—Absence of Knowledge of Insolvency—Action by Assignee for Benefit of Creditors—Validity of Chattel Mortgage—Bona Fides—Findings of Fact of Trial Judge.

Action by the assignee for the benefit of creditors of Chisholm & Morley to set aside a chattel mortgage made by that firm to the defendant as preferential and void.

F. M. Field, K.C., and J. B. McColl, for the plaintiff.
E. E. A. DuVernet, K.C., and W. F. Kerr, for the defendant.

LENNOX, J.:—Was this mortgage, so far as as the defendant is concerned, taken by way of security for "a present actual bona fide advance in money?" I think it was. Of course, I can properly reach this conclusion only if the facts in this case are clearly distinguishable in substance and effect from the facts founding the judgments in Burns v. Wilson (1897), 28 S.C.R. 207, and Allan v. McLean (1906), 8 O.W.R. 223, in appeal at p. 761; and I think that they are.

Mr. Hargraft, the bank manager, gave his evidence in a frank, unhesitating way, and I accept his account and statements as trustworthy. I am satisfied that when he placed the $2,500 to the credit of Chisholm & Morley, he did so upon the understanding—whether Morley actually said so or not—that Morley had ascertained that the Dominion Construction Company would accept and recognise the assignment then being made by Chisholm & Morley to the bank. Without this recognition or acceptance, the transaction was irregular; and, when it was discovered, after the lapse of a good deal of time, that the construction company would do nothing, Mr. Hargraft