negotiated with one Constant for an advance of $800 upon a second mortgage or charge. A written, but unsealed, charge or mortgage under the Land Titles Act for $1,000 and interest, dated the 10th December, 1914, covering the land, was prepared by Constant, the name of the chargee being left blank, and in that form was signed by the defendant. After the execution, Constant filled in the name of his wife as chargee. Constant applied to the plaintiff for a loan on the land, and told her that, if she would advance $850, he could procure a mortgage for which she would receive $1,000; the plaintiff agreed, and Constant's wife on the 19th December, 1914, executed an assignment to the plaintiff of the charge for $1,000. The charge and assignment were registered in the Land Titles office at Toronto on the 23rd December, 1914. The plaintiff's solicitors drew a cheque for $835 (their costs being $15), in favour of Constant's wife, who endorsed the cheque; Constant received the money for it, appropriated it to his own use, and afterwards disappeared.

The defendants set up that the plaintiff became assignee of the charge subject to the existing state of the accounts between chargor and chargee; and that the onus was upon the plaintiff to shew that Constant was clothed with authority to receive the money from the plaintiff, and had failed to satisfy the onus.

It was important, the learned Judge said, to consider the effect of the words "subject to the state of the account" in sub-sec. (4) of sec. 54 of the Land Titles Act, R.S.O. 1914 ch. 126—"Every transfer of a charge shall be subject to the state of account upon the charge between the chargor and the chargee." The learned Judge was of opinion that sec. 54 was to be read in conjunction with secs. 2 and 7 of the Conveyancing and Law of Property Act, R.S.O. 1914 ch. 109. This charge was to be considered and treated as though it were an instrument under seal, a mortgage (see secs. 30 and 102 of the Land Titles Act); and, no notice having been brought home to the plaintiff that the consideration acknowledged therein by the chargor had not in fact been paid, the effect of the words "subject to the state of account" was, that it was only in so far as the chargor had made payments to the chargee subsequent to the date of the charge that the assignee could be affected by the state of the accounts; and here, of course, no such payments were made.

On the question of the authority of Constant to receive the money, counsel referred to such cases as McMullen v. Polley (1886-7), 12 O.R. 702, 13 O.R. 299; but this was rather a case in which the chargor, by his own indiscretion in signing the charge in blank and delivering it in this condition to Constant, put it in his power to insert his wife's name as the chargee and deceive the plaintiff.