

the \$2,500 to the credit of Chisholm and Morley, he did so upon the understanding—whether Morley actually said so or not—that Morley had ascertained that the Dominion Construction Co. would accept and recognise the assignment then being made by Chisholm and 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 was in trouble; not because of any idea that the borrowers were insolvent, or that the loan was insecure, but because the loan, whether good or bad, was made in a way that he could not justify to the bank. Although it is true, then, that Mr. Hargraft was very active in procuring this loan, and although, as a result, the bank was repaid, it cannot in this instance be fairly said that the “transaction was carried through at the instance and for the benefit of the bank.” The bank never knew of the irregularity, made no complaint and took no action. The anxiety of the manager was for his own safety—he had to get the assignment out of the way or perhaps lose his position. He was willing to use his own money for the purpose, and I believe him when he recounts the satisfactory shewing made by Mr. Morley, and when he says he believed what Morley told him, and that although he knew the firm owed money he had no thought that they were insolvent. He had a right to insist, as he did, upon Chisholm and Morley getting this transaction off the bank books, and believing, as I find he did, that the firm was financially sound, I see no reason why he could not have made a direct loan out of his own funds to Chisholm and Morley upon the security of their chattels for the express purpose of straightening out the bank account; except that a chattel mortgage to their manager from customers of the bank might attract the attention of the head office and lead to enquiries and disclosures, with consequent loss of confidence in Mr. Hargraft as a manager. *Johnston v. Hope*, 17 A. R. 10.

I come now to the position of the defendant. He was approached by Mr. Armstrong, a friend of Mr. Hargraft, but not the bank solicitor, as was attempted to be shewn. Armstrong was instructed by Morley, and Hargraft had conversations with him as well. The defendant was in the habit of loaning money on chattel mortgages and to do this borrowed money from the Bank of Toronto, through Hargraft as manager, at 6 per cent., and made something on