

G. Larratt Smith, for the appellants.

S. G. Crowell, for the liquidator.

H. C. Macdonald, for Ridge, the claimant.

KELLY, J.:—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 are 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, that the bank have 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 are not entitled to an assignment of the mortgage. This case is not in that respect distinguishable from *Central Bank v. Garland*, 20 O.R. 142 (affirmed in appeal, 18 A.R. 438), where the learned Chancellor, stating the law as drawn from authorities which he then cited, held that the hire receipts there in question were accessory to the debt, that there was no right to separate the two things (the hire receipts and the notes), and that in equity the transfer of the notes to the bank was a transfer of the securities (the hire receipts). That applies here. The company could not, and the liquidator cannot, resist the claim of the bank to have the mortgage accompany the notes. The liquidator should not discharge the mortgage, but assign it to the bank, to be held as collateral security to Ridge's notes.

The liquidator's counsel appeared on the motion, and submitted to whatever ruling the Court might make. Costs of the bank and of the liquidator of this application will be payable out of the estate.