Timmis, who was the promoter of the merger of certain manufacturing and importing wholesale jewellery businesses, from which the company referred to was formed, was making a profit on the transfer of the businesses to the new company. No importance, however, attached to the alleged concealment. Timmis was not obliged to disclose to a proposed underwriter the fact that he expected to make a profit, and it must have been apparent to the testator, if he considered the matter at all, that some profit was in contemplation. Some of the misrepresentations alleged were not material; but in a letter written by Timmis there was one most material statement, which appeared to have been absolutely untrue, viz., the statement that the money to be derived from the sale of the surplus assets of the amalgamating concerns, together with $150,000 to be raised by the sale of shares to clients of J. A. Mackay & Co. Limited, would give the company ample cash capital, so that there was little chance of it becoming necessary to call upon the underwriters. The agreement, in the hands of J. A. Mackay & Co. Limited, would have been affected by this misrepresentation made by Timmis, and they could not have succeeded in an action based upon the agreement. The agreement was given upon the express condition that it might be pledged to any "banking institution" as security for advances. It was pledged to the plaintiffs as security for advances; and the plaintiffs are a "banking institution," though not a bank: the general effect of the Quebec statutes relating to the plaintiffs—52 Vict. ch. 72, 59 Vict. ch. 70, 63 Vict. ch. 77, and 9 Edw. VII. ch. 115—is such that the plaintiffs must be considered one of the institutions to which the testator, by the use of the words quoted, authorised J. A. Mackay & Co. Limited to hypothecate the agreement sued upon.

Soon after the deposit of the agreement, the plaintiffs made an advance of $2,000 to J. A. Mackay & Co. Limited, and later on Mackay & Co. acquired more shares from the Canadian Jewellers Limited, and paid for them with money borrowed from the plaintiffs. Presumably, the $2,000 and the later sums were advanced partly upon the faith of the validity of the testator's underwriting and of the other collateral securities held by the plaintiffs. The defendant was not entitled to set up the misrepresentation as against the plaintiffs, for the reason that "it appears from the terms of the contract that it must have been intended to be assignable free from and unaffected by" any equities existing between the testator and the Mackay company—otherwise the words, "this underwriting may be pledged or hypothecated as security for advances," had no meaning; and it followed that the rule that a chose in action assignable only in equity must be assigned subject to the equities existing between