

Province of Ontario.

COURT OF APPEAL.

From DIVISIONAL COURT.]

[Jan. 12.

BEATTIE v. WENGER.

*Bankruptcy and insolvency—Assignments and preferences—Pressure—Security—R.S.O. c. 124, s. 3, sub-sec. 3 and s. 19, sub-sec. 4.*

The doctrine of pressure may still be invoked in order to uphold a transaction impeached as a preference, when it is not attacked within sixty days or when an assignment for the benefit of creditors is not made within that time.

The liability of the endorser of a promissory note made by the debtor, held by the creditor for part of his debt, is not a "valuable security" within the meaning of sub-sec. 3 of s. 3 of R.S.O. c. 124, and if such a note is given up by the creditor to the debtor in consideration of a transfer of goods impeached as a preference, the liability cannot be "restored" or its value "made good" to the creditor or the endorser compelled to again endorse.

What is referred to in this sub-sec. is some property of the debtor which has been given up to him or of which he has had the benefit; some security upon which the creditor, if still the holder of it, would be bound to place a value under sub-sec. 4 of s. 19 of R.S.O., c. 124.

Judgment of the Divisional Court reversed.

W. R. Riddell, and Mearns, for the appellant, Wenger.

W. C. McKay, for the appellant, Campbell.

Garrow, Q.C., for the respondent.

From ROBERTSON, J.]

[Jan. 12.

JOHNSTON v. CATHOLIC MUTUAL BENEVOLENT ASSOCIATION.

*Benevolent society—Rule directing payment to named beneficiaries—Certificate payable to beneficiary's executors—Rights of creditors and legatees—R.S.O. c. 172.*

A certificate issued in favor of an unmarried man by a benevolent society incorporated under R.S.O. c. 172, directed payment to his executors. The rules of the society required the beneficiary to be named in the certificate, and in default provided for payment to certain named relations of the member, or his next of kin, or to the beneficiary fund of the society.

Held, MACLENNAN, J.A., dissenting, that the beneficiary fund did not pass to the member's executors under his will, and that neither creditors nor legatees could claim it, but that the case must be looked upon as one of default of appointment, and the money applied as directed by the rules.

Judgment of ROBERTSON, J., affirmed.

Parkes, for the appellants.

Shepley, Q.C. and Campion, Q.C., for the respondents.