

ment from the debtor. But where the surety is answerable for part of a debt only—under no obligation as to any other part—on payment of that part, he, and not the creditor, is entitled to rank in respect of it. That debt is wholly paid to the creditor; he has no further claim on any one for it. The debt becomes the debt of the debtor to the surety, and he alone can prove it, rightly. The only difficulty that has arisen is one regarding a case in which, although the surety is surety for the whole debt, his liability is limited to a certain amount only; in that case the surety cannot rank in competition with the creditor: why should he? The arrangement is, that the whole debt is to be paid, but that the creditor is to look to his other rights for recovery of any sum due to him in excess of the surety's limit of liability. What right then should the surety have to prevent, for his own benefit, the creditor's full resort to his other rights until he is fully paid? The principle is logical and right—the difficulty is in saying whether any one who has limited his liability has also agreed that the whole debt shall be first paid: or, put as it ordinarily is in terms which to some may seem inconsistent, whether the surety has guaranteed the whole debt but limited the maximum amount of his liability.

If one has done no more than give an accommodation note for a certain sum for the benefit of the creditor, it may be very difficult to shew how he has guaranteed any greater debt: but that the parties must fight out, if they cannot otherwise settle it, or have it settled, without litigation.

No order is made upon this application.

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MIDDLETON, J., IN CHAMBERS.

MARCH 23RD, 1915.

\*RE MASONIC TEMPLE CO. AND CITY OF TORONTO.

*Municipal Corporation—Regulation of Buildings on Residential Streets of City—Municipal Act, R.S.O. 1914 ch. 192, sec. 406 (10)—Municipal By-law—Erection or Placing of Building too near Line of Street—Steps Projecting from Wall of Building beyond Defined Line—Building Permit—Mandamus*

Motion by the company for a mandatory order requiring the city corporation to issue a permit for the erection of a building by the company upon land abutting on a city street.