had been struck at a point of intersection of the railway with a highway.

Barrett, for plaintiff. *Robson,* for defendants.

Richards, J.]   [April 23.

BANK OF OTTAWA *v.* NEWTON.

Valuation of security held by creditor—Revaluation after partial realization of security—Title to property covered by security after consent of assignee to its retention by creditor.

A trading firm owed the plaintiffs and had given security for the debt. They afterwards made an assignment under the Assignments Act, R.S.M. 1902, c. 8, to the defendant, who is an official assignee. The plaintiffs proved their claim at $5,390, valued the security at $3,612 and claimed to rank on the estate for $1,778. The defendant neither consented to their right to rank for that sum nor required them to assign the security to him. The plaintiffs realized, from part of the security, the net amount of $4,090 after which defendant served plaintiffs with a notice disputing their claim to rank for the $1,778. Plaintiffs then brought this action for a declaration that they were entitled to rank for that sum under s. 29.

Held, 1. The assignee was not entitled to the balance of the securities.

2. The plaintiffs must revalue that balance if they desired to rank on the estate at all.

3. After such revaluation, the amount for which the plaintiffs would be entitled to rank would be the balance of their original claim after deducting the sum already realized and the amount of such revaluation.

The plaintiffs' counsel argued, on the authority of *Bell* v. *Ross,* 11 A.R. 458, that the defendant, having delayed an unreasonable time to exercise the option given by s. 29, should be held to have thereby assented to the retention of the securities by the plaintiffs, and that such assent vested in them an absolute title to the assets, and that they were entitled to realize what they could out of the balance without accounting to the estate and to rank for the amount of their whole claim reduced only by the amount at which they had valued the securities.