

Upon the application of those creditors, after such election, for leave to withdraw their proof and reduce the value placed on their security, and prove against the estate for the sum by which it should be reduced, on the ground that the valuation was excessive, and had been made inadvertently,

Held, that they were bound by the value stated in their affidavit of claim.

[Hamilton, Dec. 21, 1878.]

This was a petition by two creditors of the estate of Richard P. Street, an Insolvent, for leave to withdraw proof made by such creditors against the said estate, under a mortgage of real estate, and praying to be allowed to reduce the value placed on the security of such real estate by \$200.

Papps, for the petitioners.

Parkes, for the assignee.

The facts are fully set out in the judgment of the learned Judge given below :

SINCLAIR, Co. J.—In this case, insolvency took place on the 17th of August, 1878, in virtue of an attachment issued that day against the insolvent. On the 3rd of September following, the petitioners, being two ladies, residing in the Village of York, in the County of Haldimand, who had a mortgage on certain real estate of the insolvent's, filed their claim against the estate, and placed a value of \$1,200 on their security, under the 84th and 86th sections of the Insolvent Act.

No negotiations took place between the assignee and these secured creditors, about the retention of the security by them, until the 15th of November last, when their solicitor wrote to the assignee to know what he intended to do in respect of their claim.

On the following day the assignee wrote to the solicitor of these petitioners that he would allow them to retain their security. Application was subsequently made to the assignee to allow these creditors to amend their claim by placing the value of their security at \$1,000, instead of \$1,200. The assignee, conceiving he had no power to allow this to be done, refused their request.

The present petition was, therefore, filed for the purpose of allowing these two secured creditors to reduce the value of their security by \$200, and thereby enabling them to prove against the insolvent's estate be-

yond the value placed on the security for so much additional. It is urged on their behalf, and as a reason why this application should be granted, that the insolvent invested the money represented by their mortgage security for them ; that they trusted to his good faith in the matter ; that he caused to be prepared on their behalf the proof of claim and the specified value of their security, and caused the same to be filed ; and represented to them about that time that he had had the mortgaged premises valued, and that they were not worth more than \$1,200, the amount at which the value of the security was placed.

These creditors either did not take any means to ascertain the correctness of the value placed on the security for them by the insolvent, or, if they did ascertain its incorrectness, took no means to correct their proof of claim, or the value placed upon such security, until after the assignee's letter of the 16th of November, 1878, intimating that he elected allowing them to retain their security.

It does not appear that the insolvent, acting on their behalf, was not perfectly conversant with the state and value of the property when he filed their proof of claim, or that they caused any enquiry to be made as to the correctness of his representations.

Lately, however, and, as I gather from the affidavits, *since* the assignee refused to take the property on behalf of the estate, these creditors have ascertained that their security, instead of being worth \$1,200, is not worth more than \$1,000. It is urged on their behalf, in support of this application, that they should not be bound by the estimate of value formed by the insolvent for them, and that in any case, as a mistake has been made as to the value, they should be allowed to amend it.

In the first place, I cannot see why, if they entrusted the valuation of their security and their proof of claim to the insolvent, they should not be bound by his actions in the same way as any other principal is bound by the acts of his agent acting within the scope of his delegated authority.

It may be that they were unfortunate in engaging or allowing the insolvent to so act