

filed with the plaintiff a claim for the amount of the mortgage indebtedness, claiming the right to rank on the estate for the full amount of such indebtedness.

The defendants asserted that, as between Frances E. Berkinshaw and William H. Berkinshaw, on the one part, and themselves, on the other part, both the former were directly and primarily liable for the indebtedness; but the plaintiff contended that the security held by the defendants was a security on the estate of Frances E. Berkinshaw, for whom William H. Berkinshaw was only secondarily liable within the meaning of sec. 20 (4) of the Act respecting Assignments and Preferences by Insolvent Persons, R.S.O. ch. 147.

The question submitted to the Court by the parties was whether the defendants were or were not obliged, in ranking upon the estate, to value their security.

ARMOUR, C.J. : In my opinion, the defendants are obliged, in ranking upon the estate of the insolvent, to put a specified value upon their security, both according to the very words of the statute and to the reason and object of it.

The provision is that "every creditor in his proof of claim shall state whether he holds any security for his claim, or any part thereof; and if such security is on the estate of the debtor, or on the estate of a third party for whom such debtor is only secondarily liable, he shall put a specified value thereon," etc.

This clearly means that if, as between the debtor and the third party, the third party is primarily liable and the debtor only secondarily liable, the creditor must put a specified value upon his security.

It matters not if, according to the form of the transaction, the debtor and the third party are both apparently primarily liable to the creditor; if, as between themselves, the third party is primarily liable, and the debtor only secondarily liable, the creditor must put a specified value upon his security, for in such case the third party is the party "for whom the debtor is only secondarily liable."

The form of the transaction is not to be looked at, but the substance of it, in order to ascertain whether the third party is the party primarily liable for the claim, and if it be found that he is, the debtor is then only secondarily liable for the claim, within the meaning of the provision.

The reason and object of the provision was to prevent the estate of a debtor being burdened by the claims for which the debtor was only secondarily liable, to a greater extent than was necessary for the protection of the creditor, and to augment his estate as much as possible.