

right to rank upon an insolvent estate as a preferred creditor for wages.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, and MIDDLETON, JJ.

A. R. Clute, for the appellant.

No one appeared for the plaintiff, respondent.

MIDDLETON, J., read a judgment in which he said that the plaintiff sued and recovered a judgment for \$195.75 wages due him by J. Frank Osborne Limited. After the recovery of judgment, the company assigned for the benefit of its creditors. The plaintiff then claimed to rank as a preferred creditor, but the defendant, the assignee, contested the claim, and this action was brought to establish the plaintiff's right.

The assignee (defendant) contended that, upon the recovery of judgment, the cause of action merged, and the plaintiff lost the right to a preference which he otherwise would have had. The Judge of the County Court held against this contention, and the defendant appealed.

The plaintiff's right must be determined upon the true construction of the Wages Act, R.S.O. 1914 ch. 143. In the case of an assignment for the general benefit of creditors, sec. 3 gives priority to the claim of the wage-earner for his wages for a limited period.

Upon the obtaining of a judgment the original cause of action is changed into matter of record, and no further action can be brought upon the original cause; but this is not conclusive of the question. The claim is yet a claim for wages, payable not by virtue of an obligation arising out of simple contract, but by virtue of the judgment upon that contract. There is nothing to prevent one looking behind the judgment to ascertain the nature of the original claim. The judgment does not merge or extinguish the debt—it merges the remedy by way of proceeding upon the simple contract: *Price v. Moulton* (1851), 10 C.B. 561, 573; *King v. Hoare* (1844), 13 M.&W. 494.

In the Wages Act there is found an indication that the wage-earner's right is not lost by the merging of the claim into a judgment, for the priority is recognised upon a distribution among execution creditors (sec. 4).

Where the Legislature has seen fit to grant a privilege in respect of claims for wages, it is the duty of the Court to see that this privilege is not cut down and the intention of the Legislature defeated by an undue application of artificial doctrines. To yield to the argument advanced for the defendant would interfere with what was plainly intended.

The appeal should be dismissed.