

The learned Chief Justice said that, in his opinion, the dividend was applicable ratably on the two sums—so that there should be a reduction for the benefit of the defendant of that portion of the debt for which she was liable. If she had paid the notes, she would have been entitled to rank as a creditor in respect of them on the debtor's estate and to receive as a dividend thereon the amount which the plaintiffs received on the portion of their claim for the payment of which she was surety: *Hobson v. Bass* (1871), L.R. 6 Ch. 792.

Where a creditor receives a dividend from the debtor's estate in respect of the creditor's whole claim, a part only of which is collaterally secured by a surety, the latter is entitled to have credited on his liability a proportionate part of such dividend: *Bardwell v. Lydall* (1831), 7 Bing. 489; *Ex p. Holmes*, *In re Garner* (1839), Mont. & Chit. 301; *Gee v. Pack* (1863), 33 L.J. Q.B. 49; *Ellis v. Emmanuel* (1876), 24 W.R. 832.

The appeal should be allowed upon this ground, and the defendant should be credited with the proper proportion of the dividend received by the plaintiffs; and the defendant's costs of the appeal should be paid by the plaintiffs.

FALCONBRIDGE, C.J.K.B.

DECEMBER 14TH, 1916.

NICHOLSON v. ST. CATHARINES COLLEGIATE
INSTITUTE BOARD.

Contract — Architect — Services in Connection with Erection of School Building—Liability of School Board for Payment—Absence of Writing and Seal—Acceptance of Plans and Adoption of Action of Committee and Members of Board—Misunderstanding as to Limit of Cost of Building—Evidence—Allowance to Architect.

Action by an architect to recover \$8,306.02 for his fees in respect of the erection of a new school building for the defendants.

The action was tried without a jury at St. Catharines.

G. F. Peterson, for the plaintiff.

A. C. Kingstone and F. E. Hetherington, for the defendants.