treated it as a subsisting contract, they were liable upon it.

Under the eighth statutory condition the defendants claimed that they were not liable upon the receipt, because there was prior insurance in another company, and their assent did not appear in and was not indorsed on the policy, or that they were not liable upon their earlier insurance because of the subsequent insurance in other companies without their assent.

Held, that the application and the interim receipt constituted the contract of insurance, and as in this contract the total amount of insurance was truly stated, and the contract continued to be binding until after the loss occurred, the defendants must be considered to have assented to such insurance, and they would be compellable to make their assent appear in, or to have it endorsed on, their policy, if such policy were issued.

Held, also, that the prior insurance was voidable, not void, and that the defendants, after the subsequent contract was entered into in which the total amount of insurance was stated, and after they knew that it was entered into, had elected not to avoid the prior insurance, but to treat it as still subsisting by extending it.

Semble, that the defendants, having assented to the insurance stated in the contract of insurance, could not assert that the effecting such insurance had the result of avoiding the prior insurance effected by their policy.

W. Nesbitt for plaintiffs.

Laidlaw, Q.C., for defendants.

STREET, J.] [March 21.

MARTIN *v.* MCMULLEN.

Bankruptcy and insolvency — Assignment for benefit of creditors—R.S.O., c. 124— Valuing security—Guaranty, construction of.

A deceased person, of whom the plaintiff was executor, gave the defendants a guaranty in respect of goods sold and to be sold to another, in the following terms: "I hereby undertake to guarantee you against all loss in respect of such goods so sold or to be sold, provided I shall not be called in any event to pay a greater sum than $2,500."

The principal debtor, being indebted to the defendants in $5,500, made an assignment under R.S.O., c. 124, and the defendants filed a claim with the assignee, but did not, in the affidavit proving the claim, state whether they held any security or not. At a later date the plaintiff paid the defendants the $2,500, and filed a claim with the assignee.

Held, that the guaranty was not a security which the defendants were required to value under the Act, and that the omission from their claim of a piece of information which could not affect it did not render it invalid.

Held, also, that this was a guaranty, not of part, but of the whole of the debt, limited in amount to $2,500, that is, a guaranty of the ultimate balance after all other sources were exhausted; and the plaintiff was not entitled to rank upon the estate in respect of the $2,500, nor to recover any part of any dividend which the defendants had received.

Hobson v. *Bass*, L.R., 6 Chy., 792, distinguished; and *Ellis* v. *Emmanuel*, 1 Ex.D., 157, followed.

S. G. McKay for plaintiff.

G. C. Gibbins for defendants.

MACMAHON, J.] [April 9.

ABRAHAM *v.* ABRAHAM.

Alimony—Registration of judgment for—Assignment by defendant for general benefit of creditors—Priorities—R.S.O., c. 44, s. 30—R.S.O., c. 124, s. 9.

The precedence given to an assignment for the general benefit of creditors by R.S.O., c. 124, s. 9, over "all judgments and all executions not completely executed by payment," does not extend to a judgment for alimony registered against the lands of the defendant prior to the registration of the assignment; for by R.S.O., c. 44, s. 30, the registration of such a judgment is to have the same effect as the registration of a charge by the defendant of a life annuity on his lands; and the defendant could not convey the lands unless subject to the charge so created; and therefore a general assignment for the benefit of creditors by the defendant in an alimony action, which was not executed until after judgment against him and not registered until after the registration of the judgment, did not take precedence of the judgment, and the plaintiff was not obliged to rank with the other creditors of the defendant.

Idington, Q.C., for the defendant, Hossie.

Osler, Q.C., and *W. M. Douglas*, for the plaintiff.