Armour, C.J.] CLANVILLE *v.* STRACHAN. [April 28.

Bankruptcy and insolvency—Insolvent debtor—Ranking on estate—Valuing security—Party primarily liable—R.S.O. c. 147, s. 20—Construction of.

By s. 20 of the Assignment Act. R.S.O. c. 147, it is provided 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."

Held, that this means that if, as between the debtor and the third party, the latter 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 claims for which the debtor was only secondarily liable to a greater extent than was necessary for the protection of a creditor, and to augment his estate as much as possible.

In re Turner, 19 Ch. D. 105, referred to.

Shepley, Q.C., for plaintiff. *Worrell*, Q.C., for defendants.

Ferguson, J., Robertson, J., Meredith, J.] [May 2.

WRIGHT *v.* CALVERT.

Costs—Set-off—Interlocutory costs—Rules 1164, 1165—Discretion of taxing officer—Appeal.

An appeal by the defendant Calvert from an order of Rose, J., in Chambers, allowing an appeal from the ruling of one of the taxing officers at Toronto, and directing a set-off of certain costs awarded to the appellant against the amount of the plaintiff's judgment debt and costs, notwithstanding the assertion of a lien by the solicitor for the appellant.

The plaintiff had recovered judgment in the High Court against two defendants for debt and costs. The plaintiff, after examining the defendant Calvert as a judgment debtor, made a motion for a receiver, which was dismissed without costs, and a motion to commit the defendant Calvert for refusal to answer and for making unsatisfactory answers upon his examination, which was also dismissed without costs. The plaintiff appealed to a Divisional Court, by one appeal, from the orders dismissing these motions, and his appeal was dismissed with costs.

On taxation of the costs of this appeal, the taxing officer was asked to set