

No. 7751. Equity.

Now, upon the part of the defendants it has been strenuously insisted that as Francis O. Quesadoff was (with but one or two exceptions) the second or third name on these joint and several notes he was in reality not a principal debtor, but merely a surety, and consequently, that his liability was contingent and not absolute, and, therefore, that he did not owe more than he was worth and cannot be considered to have been insolvent. But the obvious answer to this contention is that whatever may have been, as between himself and the other co-makers, the relation he bore to them he was. So far as the creditors were concerned, primarily liable for the whole amount as a joint and several maker, he was not an endorser, he was not a guarantor, but he was a co-maker. An effort was made during the argument to establish an analogy between his liability on these joint and several notes and the contingent or conditional liability of an insurer, but there is no such analogy. It is perfectly true that an insurer is conditionally and contingently liable, and until the event occurs upon the happening of which the liability becomes fixed there is no actual indebtedness. Hence it is that it would be illogical to aggregate the contingent liabilities of an insurer, as represented by the face of the various policies issued, and then set over against that sum total, the amount of its assets to ascertain its solvency. Recognizing the impropriety of that method of determining whether an insurer is solvent or not, the Legislature has specifically provided a standard by which solvency in such instances is to be determined. Under the second subdivision of Section 174, Article 23 of the Code provision is made for ascertaining the net value, not the face value of all the policies of a life insurance company in force on the 31st day of December of each year, and under subdivision 4 of the same section it is enacted that "in case it is found that any life insurance company doing business in this state has not on hand after deducting all debts and claims against it (exclusive of