

an order in the nature of a ca. re., made pursuant to s. 1 of R.S.O. c. 80, on the ground that it could not be said that he was going with intent to defraud creditors.

*S. B. Woods*, for plaintiffs. *F. C. Cooke*, for defendant.

Armour, C.J., Falconbridge, J., Street, J.]

[March 9.

THOMSON v. CUSHING.

*Equitable execution—Interest in land—Writ of fi. fa.—Necessity for amendment.*

On the appeal from the judgment of MEREDITH, C.J., ante p. 71,

*Held*, that the action could not be maintained as the plaintiff had no execution in the sheriff's hands when it was commenced, and an amendment was refused, allowing the plaintiff to sue "on behalf of himself and all other creditors" on the ground that this was not a class action. Decision of MEREDITH, C.J., affirmed.

*Armour*, Q. C., and *H. J. Martin*, for appeal. *Shepley*, Q.C., contra.

Boyd, C., Ferguson, J., Robertson, J.]

[March 13.

IN RE MASSACHUSETTS BENEFIT LIFE ASSOCIATION—JUNKIN'S CASE, BABCOCK'S CASE.

*Life insurance—Benefit society—Total disability—Non-payment of assessments after claim made—Forfeiture—Vested right—55 Vict., c. 39, s. 42, application of, to contract—Novation.*

Certificates of life insurance issued by a benefit society provided that in case of total disability, one half the amount of the insurance should be payable to the insured. This was subject to the following conditions among others:

"3. If the assured shall, at any time within thirty days after receiving due notice, fail to pay . . . the assessments . . . then . . . the association shall not be liable for payment of any sum whatever, and this certificate shall cease and determine."

"7. In every case when this certificate shall cease and determine . . . all payments thereon shall be forfeited to the association . . ."

A call was made by the association on the 1st March, 1897, payable on the 1st April, and notice given to T., who was then a member in good standing; on the 10th March he made a claim for total disability; and made default in paying the call on the 1st April. Further notice was given him by letter of the 9th April, by which he was to pay in fifteen days, but he failed to do so; and afterwards, upon a reference for the winding-up of the company, sought to prove a claim.

*Held*, that he was not entitled.