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DECISIONS IN COMMERCIAL LAW

JORDAN AND THE PROVINCIAL PROVI-
DENT INSTITUTION.—The provisions of the
second sub-section of section thirty-
three of "Insurance Corporations Act,
1892" (Ont.), limiting conditions and
warranties endorsed on policies, providing
for the avoidance of the contract, by rea-
son of untrue statements in the applica-
tions to cases where such statements are
material to the contract, do not require
the materiality of the statements to ap-
pear by the endorsements, but the con-
tract will be avoided only when such
statements may subsequently be judicially
found to be material, as provided by the
third sub-section. Misrepresentations up-
on an application for life insurance, so
found to be material will avoid the policy,
notwithstanding that they may have been
made in good faith and in the conscien-
tious belief that they were true.

PAYMENTS TO CREDITORS.

The right of a debtor to transfer prop-
erty to a creditor, with the object of
delaying or defeating the claims of other
creditors, has been frequently made the
subject of judicial determination. The
statute of 13 Eliz., c. 5., which contains
the law upon which creditors usually rely
for their protection, against the fraud of
a debtor, has been subjected to different
interpretations. Some of the decisions
have been so strongly against the trans-
ferees that one might almost gather that
the dictum of Jessel, M.R., in *Middle-
ton v. Pollock*, that "a payment is bona
fide within the meaning of the statute
of Elizabeth, although the man who made
the payment was insolvent at the time to
his own knowledge, and even although
the creditors who accepted the money
knew it," would not now hold. A recent de-
cision of the Supreme Court of Canada,
on a Nova Scotia action, *Mulcahy v.*
Archibald, the principle of the case above
cited has been re-affirmed. Sedgewick
J., in delivering the judgment of the
Court, remarked: "The statute of Eliza-
beth, while making void transfers, the
object of which is to defeat or delay
creditors, does not make void, but ex-
pressly protects them in the interest of
transferees, who have given valuable
consideration therefor, and it has been
decided over and over again that knowl-
edge, on the part of such a transferee of
the motive, or design of the transferor, is
not conclusive of bad faith, or will not
preclude him from obtaining the benefit
of his security. So long as there is an
existing debt, and the transfer to him is
made for the purpose of securing that
debt, and he does not either directly or
indirectly make himself an instrument for
the purpose of subsequently benefiting
the transferor, he is protected, and the
transaction cannot be held void. If the
only test of the validity of a transaction
of this kind in Nova Scotia, be whether
the debtor does or does not by it retain
a direct benefit for himself, then we think
the law might reasonably undergo some
alteration.

JOHN MACKAY

Public Accountant, Auditor, Receiver
and Trustee

Bank of Commerce Bldg., Toronto
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