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DECISIONS IN COMMERCIAL LAW

JORDAN AND THE PROVINCIAL PROVIDENT 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 reason of untrue statements in the applications to cases where such statements are material to the contract, do not require the materiality of the statements to appear by the endorsements, but the contract will be avoided only when such statements may subsequently be judicially found to be material, as provided by the third sub-section. Misrepresentations upon 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 conscientious belief that they were true.

PAYMENTS TO CREDITORS.

The right of a debtor to transfer property 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 transferees that one might almost gather that the dictum of Jessel, M.R., in *Middleton 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 decision 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 Elizabeth, while making void transfers, the object of which is to defeat or delay creditors, does not make void, but expressly protects them in the interest of transferees, who have given valuable consideration therefor, and it has been decided over and over again that knowledge, 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
Cable Address: CAPITAL. Tel. No. 3732.

THE INSOLVENCY AND LIQUIDATION DEPARTMENT OF THE

Western Loan and Trust Company, Limited,

IS OPERATED BY

W. Barclay Stephens

Manager of the Company.

Under the laws of the Province of Quebec the Company cannot be appointed directly to trusts, such as assignees, etc. Therefore, Mr. Stephens will act on behalf of the Company in all such cases, the Company assuming all responsibility and reliability in regard to any trusts which may be placed in his hands.

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