2nd. That the statements misrepresented being referred to in express terms in the body of the policy, the provisions of secs. 27 and 28 R.S.C., ch. 124, could not be relied on to validate the policy, assuming such enactments to be *intra vires* of the parliament of Canada, upon which point it was not necessary to decide.

3rd. That the indication by the assured of the person to whom the policy should be paid in case of death, and the consent by the company to pay such person, did not effect novation (Art. 1174, C.C.); and the provisions contained in Art. 1180, C.C., are not applicable in such a case.

It is too late to raise an objection for the first time on the argument before the Supreme Court that the legal representatives of the assured were not made parties to the contestation between the parties in the cause.

Appeal dismissed with costs.

Geoffrion, Q.C., and *Amyot, Q.C.*, for appellant.

Langelier, Q.C., for respondent.

OTTAWA, June 12, 1890.

Ontario.]

SHOOLBRED v. CLARK.

Winding-up Act—R.S.C., ch. 129—Application of to provincial company—Winding-up proceedings—Reference to master.

The Union Fire Insurance Company was incorporated by the Ontario Legislature, and having become insolvent, an assignee was appointed to settle its affairs under the Insolvent Act of 1875. When the Winding-up Act was passed a petition was presented to the Court to have the company wound up under its provisions, and a winding-up order was made, which was set aside by the Supreme Court of Canada (14 Can. S.C.R. 624). A second winding-up order having been made and confirmed by the Court of Appeal, a second appeal was had to the Supreme Court by S., a shareholder.

Held, affirming the judgment of the Court of Appeal (16 Ont. App. R. 161), and that of the Chancellor (14 O. R. 618), that notwithstanding the company was incorporated by the provincial legislature it could be put into compulsory liquidation and wound up under the Dominion Winding-up Act, R.S.C. c. 129.

Held, also, that the powers assigned to provincial courts or judges by the Winding-up Act are to be exercised by means of the ordinary machinery of the courts and their ordinary procedure. It was therefore no ground of objection to the winding-up order in this case that it was referred to a master to settle the security to be given by the liquidator appointed therein.

Appeal dismissed with costs.

S. H. Blake, Q.C., and *McLean*, for the appellant.

Bain, Q.C., for the respondents.

OTTAWA, June 12, 1890.

Ontario.]

CLARKSON v. RYAN.

Lien—Costs of execution creditor—Assignment for general benefit of creditors—Construction of Statutes 48 *Vict., c.* 26, *s.* 9—49 *Vict., c.* 25, *s.* 2.

48 Vict. (O.), c. 26, s. 9, as amended by 49 Vict. (O.), c. 25, s. 2, provides that an assignment for the general benefit of creditors has precedence over all executions not completely executed by payment "subject to the lien, if any, of an execution creditor for his costs where there is but one execution in the sheriff's hands, or the lien, if any, of the creditor for his costs who has the first execution in the sheriff's hands."

Held, per Ritchie, C.J., Fournier and Taschereau, JJ, affirming the judgment of the Court of Appeal (16 Ont. App. R. 311), that the lien referred to in this section attaches to the full costs of the action of the execution creditor against the insolvent debtor.

Held, per Gwynne and Patterson, JJ., dissenting, that such lien is only for the costs of issuing execution and sheriff's fees etc., incurred in executing the same.

The statute of Ontario requiring special leave to appeal to the Supreme Court in cases where the amount in controversy is under $1,000 (s. 43 Jud. Act., 1881) is *ultra vires* of the legislature of Ontario and not binding on the Supreme Court.