Blanchard is very positive that he had an interview with Morice, the agent, about the first garnishing order which the plaintiffs obtained, and says he consented to that order being discharged upon an express agreement that the plaintiff's mortgage should be paid out of the insurance money, and not later than the 15th or 20th of May. This Morice denies. He says Blanchard proposed that, and he then told him that the defendant was not satisfied about the Grant sale, upon which Blanchard said he could easily satisfy the defendant as to that. To that Morice replied that if he could do so, perhaps the defendant would pay it out of the proceeds of the policies. He says, too, there was another condition spoken of, and that was the getting Machar, who was also a creditor, to take other securities. The garnishing order which was at that time discharged was one obtained upon defective material. Even if the material had not been defective, it could not have been upheld on the merits as the one afterwards obtained was also discharged, and not upon a technical ground but on the merits.

But an executor or administrator is entitled to prefer one creditor at the expense of another; he may even confess judgment to a creditor in equal degree with the plaintiff pending the action and plead it in bar, and though done for the express purpose of depriving the plaintiff of his debt, it is good both at bar and in equity. Actual fraud may under *Earl Vane* v. *Rigden* justify the Court in setting aside such a preference, but the mere act of preferring is not, in itself, fraud. This right of preferring one creditor at the expense of another has not been interferred with by the 32 & 33 Vic. c. 46, which took away the right to priority from specialty creditors.

The assignment is not void under the 13 Eliz. c. 5. The persons for whose benefit it has been made are creditors of the intestate. It has been communicated to them, and some of them, at all events, have assented to it. It is in evidence that they, on the faith of its having been executed, refrained from pressing their claims against the estate, or taking legal proceedings upon them.

It is further claimed that the assignment is void under Con. Stat. Man. c. 37 s. 96. But I do not see that this section affects a case like the present. The principle upon which the courts in Ontario decided such cases as *Bank of Upper Canada* v. *Brough*,