

## REPORTS AND NOTES OF CASES

## Dominion of Canada.

## SUPREME COURT.

Nova Scotia.]

CUMMINGS *v.* TAYLOR.

[May 6.

*Assignment for benefit of creditors—Preferred creditors—Money paid under voidable assignment—Levy and sale under execution—Statute of Elizabeth.*

Where an assignment has been held void as against the statute 13 Elizabeth, c. 5, and the result of such decision is that a creditor who had subsequently obtained judgment against the assignor, and notwithstanding the assignment, sold all the debtor's personal property so transferred under execution issued upon the said judgment, was entitled to all the personal property of the assignor so levied upon by him under his execution, such creditor has no legal right or equity to an account, or to follow moneys received by the assignee or paid by him, under such assignment in respect to which he has not secured a prior claim by taking the necessary proceedings to make them exigible. Appeal allowed with costs.

*Lovett*, for the appellants. *McNeil*, for the respondents.

Ontario.] JORDAN *v.* PROVINCIAL PROVIDENT INSTITUTION. [June 14.

*Life Insurance—Application—Representation—Warranties—55 Vict., c. 39 s. 33 (2) (3) (Ont)*

The provisions of sub-section two of section 33 of "The Insurance Corporations Act, 1892" (Ont.), requiring any condition or warranty endorsed on the policy providing that the contract of insurance should be avoided by reason of statements in the application, to be limited to cases in which such statements may be material to the contract, do not require the materiality of the statement to appear on the endorsement, but the contract will only be avoided thereby if such statement is subsequently judicially found to be material under the following sub-section. A misrepresentation in such a statement if so found to be material will avoid the policy notwithstanding that it was made in good faith and in the conscientious belief that it was true. Appeal dismissed with costs.

*Reeve*, Q. C., and *Day* for appellants. *Oster*, Q. C., and *MacMurphy* for respondent.

Ontario.] ANDERSON *v.* GRAND TRUNK RAILWAY. [June 14.

*Railway—Use of railway premises—Invitation—Trespass—Negligence.*

At a place called Lucan Crossing, on the line of the Grand Trunk railway, passengers are received and allowed off, tickets being sold to and from such place. There is no depot, but a small building, part of which is used for a