

C. L. Cham.]

MACKLEM v. DURRANT—ROBERTSON v. GLASS.

[C. L. Cham.]

no conveyance, which itself is the act of bankruptcy relied upon, can be valid in favour of any party to it if the bankruptcy is upheld.

As regards the objection to the affidavits. I am of opinion that it is entitled to prevail, and that the affidavits in this case are insufficient. It is impossible to say whether the plaintiffs complain of an act, or an attempt to commit an act, and when we consider how essential it is to a party to know exactly with what he is charged, as the consequences to him are so penal, I think that the rule laid down in Chitty on Criminal Law, Vol. 1, p. 230, which is as follows:—"Another general rule relative to the mode of stating the offence is, that it must not be stated in the disjunctive, so as to leave it uncertain what is really intended to be relied upon as the accusation"—should be followed in cases of this description, and that an affidavit should state positively the act relied upon as constituting the act of bankruptcy.

The appeal therefore is dismissed with costs.*

MACKLEM v. DURRANT.

Witness—Privilege from arrest.

A witness is privileged from arrest whilst returning home after giving his evidence, and he does not lose his privilege by staying a night at the house of a friend, some distance from the place of trial, to refresh himself, if he uses reasonable expedition to return home.

[Chambers, Nov. 3, 1869.]

The defendant, who was indebted to the plaintiff, went to Michigan to reside. He subsequently returned to this country, to give evidence at a trial which took place at St. Thomas. After the trial was over, it being then too late to start for home that evening, except he went by the night train, he went to a friend's house to stay the night. To do this he had to go a few miles from the place of trial and out of the direct route homewards. He went to the station the next morning to take the first train towards his home, but was arrested on a *capias*, at the instance of the plaintiff.

J. A. Boyd thereupon obtained a summons to set aside this arrest, as being a breach of the defendant's privilege as a witness.

R. A. Harrison, Q. C., shewed cause.—The defendant deviated from his direct route towards home, and thereby lost his privilege: *Spencer v. Newton*, 6 A. & E., 623.

J. A. Boyd, contra.—There was no deviation. The defendant did not go out of his way on his return home; he merely went to spend the night at the house of a friend, instead of staying at an Inn, or travelling all night, and, he was at the station ready to take the first train the next morning: see *Pitt v. Coombs*, 5 B. & Ad. 1078; *Hatch v. Blissett*, Gilbert's cases, 308; Bacon's Abridgment, "Privilege;" *Meekin v. Smith*, 1 H. Bl. 636; *Lightfoot v. Cameron*, 2 W. Bl. 1113;

* Mr. Boyd applied for an order to tax a counsel fee and briefs to the same amount, and in the same manner as would be allowed if the appeal had been argued before the court. The order was granted, but with an expression on the part of the learned judge, that he very much doubted his power to make it, although he stated, that in his opinion it should be granted in cases of this description where the labour of counsel in preparing and arguing the case, and of the attorneys in preparing the briefs, had been very onerous, and precisely the same as if the appeal had been to the court.—REF.

Webb v. Taylor, 1 D. & L. 684; *Willingham v. Matthews*, 2 Marsh. 59; *Selby v. Hill*, 1 Dowl. 257, 8 Bing. 166.

GALR, J. during the argument said, that unless the rule laid down in the case cited from Gilbert's Reports was no longer law, the defendant's contention must prevail.

After deliberation the summons was made absolute, the judge remarking, that the defendant had used reasonable expedition in preparing to return home. He was not bound to leave the same evening after the trial, as, under the cases, he was entitled to rest and refresh himself. Nor was it any deviation that the defendant, instead of lodging at an hotel or inn, went out of town to stay at a friend's house; in all this he was acting within the limits of his privilege, and should not have been arrested at the station on the following morning.

ROBERTSON v. GLASS.

Embarrassing plea—Immaterial averment—Duplicitv.

The plea set out below was held embarrassing, and was ordered to be struck out.

A plea is embarrassing which alleges several facts wholly irrelevant to the question in controversy.

[Chambers, November 26th, 1869.]

The plaintiff as indorsee sued defendant as acceptor of a bill of exchange drawn by one E. E. Gilbert upon and addressed to the defendant.

To this the defendant pleaded as follows:—

"That a certain corporation or body corporate known as and called the Richardson Gold Mining Company had certain dealings with the said E. E. Gilbert, of the city of Montreal, in the declaration mentioned, and from him they purchased certain machinery for the purposes of them the said Richardson Gold Mining Company, and for the purpose of the mining operations then carried on by the said company. Being so indebted to the said Gilbert, he the said Gilbert made and drew the bill of exchange hereafter set out, which was in form and to the effect following, that is to say:

"\$800 00. MONTREAL, February 19th, 1869.

"Two months after date pay to the order of myself at the Jacques Cartier Bank in Montreal, eight hundred dollars value received and charge the same to account of James Glass.

"(Signed.) E. E. GILBERT,

"Secretary Richardson Gold

"Mining Co., Belleville, Ont.

"To James Glass."

That the said Gilbert drew the said bill for said consideration received by said company, and intended the said bill of exchange, when so drawn, to be accepted and paid by the said company, and he did not when he drew the said bill, intend or understand that the same should be a draft or bill upon the defendant in his individual capacity, or that the same should be accepted by, or be payable by the said defendant in his individual capacity.

That the said bill so drawn and addressed was presented by the said Gilbert to the defendant as secretary to the said company and in his, the defendant's official capacity, that he the defendant then being the secretary of the said company, wrote upon and across the face of the said bill of