tion, which renders him liable upon his duty independently of contract altogether.

In this case, suppose there had been two persons who had hired the horse, and only one had been sued, could he not have pleaded the non-joinder of the other? I think he could.

The plaint or particulars here shew that the defendant "undertook and agreed to take good care, &c.," which is certainly a contract: *Chitty* on Pleading (6th ed. 87.)

The fact that the defendant got a non-suit on this same complaint, which he could not properly have got if the court had no jurisdiction, and the fact that he moved for a new trial—which he could not have got either—shew, as the fact is alleged, that the defendant never set up the want of jurisdiction, and therefore that no want of jurisdiction ever appeared by the evidence, and none, I think, appear on the face of the proceedings, but the contrary.

I have delayed this in consequence of the pressure of term business, and not for any difficulty in coming to a conclusion, for the opinion I express now is the same as that which I stated during the argument.

Summons discharged without costs.

INSOLVENCY CASES.

Sharp & Secord v. Robert Mathews.

Insolvent Act 1864, sec. 3, cl. e. and sub-sec. 7—Writ of attachment—Grounds for—Affidavit—Form of, and who can make.

The mere intention on the part of a debtor to dispose of his property, and the apprehension of his sole creditor that he will not then, although perfectly able, and owing no one else, pay the creditor his debt, does not bring the debtor within sec. 3, clause c., of the Insolvent Act, 1864.

In entitling affidavits for an attachment under the Insolvent Act, 1864, form F. should be followed.

Sec. 3, ss. 7, is complied with, although the creditor or his agent who swears to the debt is also one of the two persons testifying to the facts and circumstances relied on as constituting insolvency.

[Chambers, Jan. 26, 29, 1869.]

On the 6th of January, the Judge of the County Court of the county of Wentworth made an order for a writ of attachment to issue out of that Court against the above named defendant, as an insolvent, at the suit of the above plaintiffs. On the 7th of January the writ was served. On the 9th of January the defendant filed his petition in the County Court praying that the writ of attachment might be set aside. The petition was accompanied with the affidavits of the defendant, and of two other persons, testifying to the *bona fides* of the transaction, which the plaintiffs assailed as exposing the defendant to compulsory liquidation under the Insolvent Act. The petition also assailed the proceedings of the plaintiffs as defective in the following particulars: 1st. That the affidavits filed by plaintiffs disclosed no grounds to warrant the order and writ of attachment. 2nd. That they shewed that defendant was not insolvent. 3rd. That they afforded no sufficient evidence that he had parted with his estate and effects with intent to defraud, defeat, or delay creditors. 4th. That the said affidavits are entitled in a cause, whereas there was not, until the issuing of said writ, any cause in Court.

Upon this petition a summons was issued, calling upon the plaintiffs to shew cause why the writ of attachment should not be set aside. Upon this summons being heard, the Judge, on the 19th day of January, made an order setting aside the writ of attachment, and all subsequent proceedings on the merits.

Notice of an application for allowance of an appeal from this order was given. On its return,

J. B. Read opposed the allowance, as well on the grounds stated in the defendant's petition in the County Court as on the merits disclosed in the affidavits filed by the defendant with that petition.

Gwynne, J.—I am of opinion that no appeal should be allowed in this case, and that the order of the Judge setting aside the writ of attachment was a proper one to be made in the premises. The affidavits filed, on which the writ of attachment issued, do not, in my opinion shew that the estate of the defendant has become subject to compulsory liquidation. It appears by the affidavit of the plaintiff, George Reid Secord, that the plaintiffs are the defendant's sole creditors: that within a few days preceding, the defendant had sold and disposed of real estate in the city of Hamilton for $1,900, receiving in payment therefor cash and mortgages, and that he is now about to assign said mortgages with intent, as the deponent believes, to defraud the plaintiffs of their said debt: that the defendant has not, to the best of deponent's knowledge and belief, any other assets or property of any value that are or can be made liable for the payment of the said debt: that the debt has been overdue for some time—that, in brief, he has the means of paying the plaintiffs' debt, which is the only debt due by him, and that he refuses to pay it, or to give the plaintiff any satisfaction as to what he is going to do with the proceeds of the sale of the land further than that he would pay his debts, and that, with reference to the plaintiffs' claim, defendant said that he would pay just as much as he had a mind to. The affidavit has attached to it a copy of a letter from a gentleman acting as solicitor of the defendant, in which the defendant disputes the correctness of the amount of the plaintiffs' claim and offers, without prejudice, $200 for a discharge in full. There was also an affidavit of the plaintiffs' book-keeper, deposing to the correctness of the amount claimed by the plaintiffs, viz., $500. This deponent also swears as follows: "I am credibly informed and verily believe that the defendant has lately disposed of his property and is now about to assign and dispose of the mortgages taken by him for the balance of the purchase money thereof, with intent to defraud the plaintiffs of their debt." There was also an affidavit of Mr. Gibson, a solicitor, who deposes as follows: "I am aware of the defendant having, during the past week, sold lot number three in Moore's survey of this city, a portion thereof to one George Matthews for the sum of $700, and the remainder of the said lot to one Robert Kelly for the sum of $1200. The said Robert Kelly paid in cash the sum of four hundred dollars and gave a mortgage to the said defendant for the balance of $800. I am not aware what amount was paid down by the said George Matthews, but I think there was about $300, and a mortgage was given by the said George Matthews to the defendant for the bal-