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., $509. 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 balance. In the carrying out of said sale I acted for Robert Kelly, one of the purchasers, and in the course of the transaction, Mr. Sadleir, solicitor for said defendant, said, in my presence, that he would want to have access to the abstracts of title as he was going to negotiate the mortgages."

Now these affidavits show that the sale of the land was *bona fide* for value, and all that the application for the attachment rests upon is the affidavit of the plaintiff Secord and that of his book-keeper, that in their belief the defendant is about to assign them with intent to defraud the plaintiffs of their claim, without any facts or circumstances being stated or at all shewn to lead to that belief, unless it be what is stated in Mr. Gibson's affidavit that Mr. Sadleir said he would want to have access to the abstracts of title as he was going to negotiate the mortgages. Now if the intended disposition or the mortgages is by actual sale of them and not a *fraudulent* disposition of them, I apprehend that the entertaining such an intent to make an actual sale would no more expose a person to compulsory liquidation than the actual sale itself would. The whole gist of the affidavits of plaintiff and his book-keeper must, I think, be taken to be merely that the defendant intends to make sale of his property, that is, an actual out and out sale; but that they apprehend he will not then, although perfectly able and owing no one else anything, pay the plaintiffs their debt. I do not think the entertaining such an intent brings the party entertaining it within the clause *c* of the 3rd sec. of the Insolvent Act. But then, in his petition to set aside the writ of attachment, the defendant swears that he sold the land to pay off a mortgage upon it, by which he was subject to 10 per cent interest: that he has paid off that mortgage, and that he does intend to sell the mortgages taken by him for balance of purchase money for the purpose of paying the plaintiffs what he believes he owes them and of supporting his family, and he denies that he owes the plaintiffs anything like the amount claimed by them to be due. This affidavit is accompanied by affidavits of George Matthews and Kelly, who swear that their purchases were *bona fide* and made for full value. I can see nothing in the affidavits to justify a suspicion of fraudulent disposition of property, of an attempt fraudulently to dispose of property within the meaning of the Insolvent Act.

I have been asked to express my opinion upon two minor points which in the view I take