

C. L. Cham.]

ROYAL CANADIAN BANK V. MATHESON.

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commercial interests of the county must be the same in all cases coming within them.

That being so I see no difficulty in the way, on considering authorities, of coming to the conclusion, that, in this, as well as every other case, in order to render the estate of a party subject to compulsory liquidation under the clause in question, several circumstances must concur: 1st, the transfer must be fraudulent; 2nd, there must be an intention to defeat and delay creditors; and 3rd, the buyer must know, or, from the very nature of the transaction must be taken necessarily to know that the object was to defeat and delay creditors: *Hill v. Farnell*, 9 B. & C. 45; *Harwood v. Bartlett*, 6 Bing. N. C. 61; *Baxter v. Pritchard*, 3 N. & M. 638; *In re Colemere*, 13 L. T. N.S. 621; *Sharp and Secord v. Mathews*, 5 P. R. 10.

Was there then such a concurrence of circumstances in this case as would shew that the sale of the defendant's house and lot in Woodstock was fraudulent so as to constitute an act of bankruptcy? I think not. It was not contended on the argument that the sale was not *bona fide* and for value; and the affidavits upon which the application for the attachment rests do not aim at impeaching the transaction on the ground of fraud, or want of consideration.

The sale, then, being *bona fide* and for value cannot be tortured into an act of bankruptcy merely because the defendant did not pay over to the plaintiffs the amount of the purchase money as they were lead or seemed to expect he would, on the sale, in discharge of their claim against him.

*Baxter v. Pritchard* is an express authority on this point. There it was held that an assignment by a trader of his whole stock with intent to abscond and carry off the purchase money was not an act of bankruptcy, as a fraudulent transfer and delivery of his property with intent to defeat and delay his creditors, as the purchaser paid a fair price for the goods and was ignorant of the trader's design.

But the plaintiffs contend, without impeaching or attempting to impeach the sale or deed of conveyance of the property, that his subsequent conduct with regard to the purchase money shewed that the sale was for the purpose of delaying and defeating creditors, and therefore an act of bankruptcy.

With regard to this doctrine, the Lord Chancellor (Crauworth), in *Colemere and Colemere*, 13 L. J. N. S. 623, says: 'That I cannot understand, because, if the deed is impeachable it can only be impeachable so as to constitute an act of bankruptcy because it is fraudulent. But if it is fraudulent the deed is void. It will not be an act of bankruptcy because the person who receives (erroneously reported, gives) the money has it in contemplation probably to deal with the money in some way that may constitute an act of bankruptcy. That is not what can be looked to in considering whether the deed itself is fraudulent. The deed itself, if fraudulent, would be impeachable. If not impeachable, it is not an act of bankruptcy.'

Then on the merits, the defendant, in his affidavit annexed to the petition to set aside the writ of attachment, swears that he sold the property for the express purpose of enabling him to

pay off his liabilities in full; that before he sold it he informed Mr. Burns of his intention to do so; that he did not sell it to defeat or defraud his creditors, or any of them; that he disputes and intends to dispute his liability to the plaintiffs in this case; that he is not insolvent; and he then swears to statements of assets and liabilities, which shew an amount of assets in excess of his liabilities, inclusive of the disputed claim of plaintiffs to the amount of \$1087 98.

Upon the whole, considering and acting upon the evidence adduced, I can see nothing to lead to the belief that the defendant has made a fraudulent disposition of his property, or, to shew that his estate has become subject to compulsory liquidation. I think therefore that the prayer of the defendant's petition must be granted.

This decision, upon the advice given, will, no doubt, be appealed from; and, if erroneous, will be corrected. It is a great satisfaction to know, that in such important matters the decision is not conclusive upon the parties. The judge or court appealed to will have, however, an advantage, inaccessible to me on the argument, of hearing this case and *Colemere v. Colemere*, distinguished."

On the argument in chambers, on the appeal from the above decision of the learned judge of the county court.

R. A. Harrison, Q.C., appeared for appellant.  
J. A. Boyd, contra.

GALT, J.—The authorities principally relied upon by the learned judge in his very able and carefully considered judgment are, *In re Colemere*, L. R. 1 Ch. Appeal 128, and the cases cited therein, and *Sharp & Secord v. Robert Matthews*, 5 Prac. R. 10, decided by Mr. Justice Gwynne. Upon the argument before me, Mr. Harrison, counsel for the appellants, endeavoured to distinguish this case from *In re Colemere*, on the ground, that in the 3rd sec. of 6 Geo. IV. ch. 16, the word "fraudulent" is used, which is wanting in our Insolvency Act of 1864, sec. 3 subsec. c. Mr. Boyd, for the defendant, supported the judgment of the learned judge, and in addition, objected that the affidavits on which the attachment was issued were defective for uncertainty, and that they were so vague that it was impossible to say positively what was the act of bankruptcy on which the plaintiffs relied.

I am of opinion that the judgment of the learned judge is correct, and I cannot agree with Mr. Harrison's argument, that a sale made for a full consideration, and to a *bona fide* purchaser (which is not disputed in this case), should, under the provisions of our act, render the vendor's estate liable to compulsory liquidation, because, for some reason or other, he declines paying over the proceeds to some one of his creditors, although he may have ample means to satisfy all claims against him, as is positively sworn to in this case. The case of *Sharp v. Mathews*, to which reference has been made, is a stronger case in its circumstances than this, and is an authority in favour of the defendant. Mr. Harrison was obliged to contend in order to distinguish this case from *In re Colemere*, that in this Province, under the peculiar wording of our act, a deed might be valid *quoad* the purchaser, but an act of bankruptcy on the part of the seller. It appears to me, on the contrary, that