ONTARIO REPORTS.

COMMON LAW CHAMBERS.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law.)*

Royal Canadian Bank v. Matheson.

Insolvent Act of 1864—Sec. 3, clause c—Affidavit.

Held, 1. That a sale by a debtor for full consideration to a *bona fide* purchaser cannot render his estate liable to compulsory liquidation under above section merely because he declines to pay the proceeds to one of his creditors, though coupled with subsequent circumstances tending to raise a suspicion of the *bona fides* of his disposal of such money.

2. Affidavits to found an attachment should definitely charge the act of insolvency relied upon.

Semble, that no conveyance which is in itself an act of insolvency can be upheld as valid in favor of any party to it.

[Chambers, November 3, 1869.]

This was an appeal from the judgment of the judge of the county of Oxford setting aside a writ of attachment sued out by the Royal Canadian Bank against John Matheson. The writ of attachment was obtained on the affidavits of Mr. Burns, agent of the plaintiffs at the town of Woodstock, and of Mr. Ashton Fletcher of the same place, solicitor for the plaintiffs These affidavits shewed that the defendant was indebted to the plaintiffs in the sum of eighteen hundred and thirty-eight dollars, on two bills of exchange, drawn by one Malcolm McKinnon, and accepted by the defendant. The affidavits were so far similar that it is unnecessary to cite them both. The following is an extract from that made by Mr. Burns. After swearing to the amount and origin of the claim, the deponent proceeded as follows:—

To the best of my knowledge and belief, the defendant is insolvent within the meaning of the Insolvent Act of 1864, and has rendered himself liable to have his estate placed in compulsory liquidation under the above act, and my reasons for so believing are as follows:

That the defendant has always, since maturity of the first bill above-mentioned, informed me that he had no property except his house in the town of Woodstock, and that he would sell the same and pay the amount of the plaintiff's claim, and has fixed different times for so doing, all of which have passed.

Some time ago, and within three months, the defendant told me, that he had arranged a sale of the said house to one Mrs. Dunbar, and as soon as she paid the money for the same that he would pay up the plaintiff's claim.

On the twenty-second instant, the defendant came into the office of the bank and told me that he had got sixteen hundred dollars on the said house, that he had given to his wife one thousand dollars to induce her to bar her dower, and had nine hundred dollars in his pocket, but that he would not pay the same unless I would release the whole of the bank's claim, and give up both the said bills of exchange on receiving the said nine hundred dollars.

I requested him to pay the same on account, offering to give time for the balance.

From these facts and circumstances I have been led to believe, and verily do believe, that the defendant has within a few days past assigned or disposed of his property, or has attempted to assign or dispose of his property with the intent to defeat or delay his creditors, or the plaintiff."

The affidavit of Mr. Fletcher concluded in the same words, which, in fact, are a transcript of clause *c*, of sec. 3 of the Insolvent Act of 1864, omitting any reference to a removal of property which in the present case would be inapplicable.

Upon the facts set forth in these affidavits, the attachment in question was issued on 29th July, 1869, and was served on the defendant on the 2nd of August. The petition of the defendant to set aside the attachment was duly presented to the judge of the county court, supported by an affidavit of the defendant in which, among other things, he stated that he believes that he has not rendered himself liable to have his estate placed in compulsory liquidation; that the papers attached to his affidavit contain true statements of his liabilities and assets; that before selling his house and premises he informed the agent of the plaintiffs of his intention to do so; and that he sold the same for the express purpose of enabling him to pay all his liabilities in full; and that he did not sell the said property with intent to delay or defraud his creditors or any of them; that he had duly received $1000 of the purchase money; that his wife positively refused to bar her dower unless $1000 were paid to her; that the solicitors of the purchaser (Mrs. Dunbar) advised her not to purchase the property unless the wife's dower was barred; and that he was forced to consent to this payment being made, and that the same never came into his hands; that certain improvements are to be made by him upon the completion of which the balance of the purchase money is to be paid to him, and will amount at least to the sum of $850. There were then several statements made respecting the origin of the plaintiff's claim and other matters, which, as they do not affect the decision of the present appeal are omitted, and the affidavit concluded with a denial of any intention to abscond, or that he had assigned, removed, or disposed of his property with intent to defraud, defeat, or delay his creditors, or any of them, &c., &c. The papers alluded to in the foregoing affidavit shewed that the liabilities of the defendant amounted to $1001.52, exclusive of plaintiff's claim, or including that to the sum of $2831.52; while the assets, including the $850 to be paid by Mrs. Dunbar, amount to $3918; in other words, that exclusive of the plaintiff's claim, the defendant is possessed of nearly four times the amount of his liabilities, and that including it he has $1000 over and above his debts. There were affidavits from Mr Burns and Mr. Fletcher in reply, but the learned judge did not think them to be of much consequence to the decision of the point in dispute.

The case was first argued before the judge of the county court, D S. McQueen, Esquire, whose judgment was as follows:—

"The words descriptive of an act of bankruptcy in clause c of the 3rd section of our Insolvent Act are similar, and a mere repetition in substance of section 3 of the Imperial Act, 6 Geo. IV. c. 16

I take it then, that the rule of law and the construction of those enactments as affecting the