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 sub-sec. 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. *Matthews*, 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 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.

(In the County Court of the County of Essex.)

IN THE MATTER OF GILBERT MCMICKEN, AN INSOLVENT.

Insolvency.

A person who is insolvent at the time he contracts a particular debt or debts is not guilty of fraud within the meaning of section 8, sub-section 7, of the Insolvent Act of 1864, unless he conceals the fact or makes wilful misrepresentations as to his solvency at the time.

[Sandwich, 17th April, 1869.]

LEGGATT, Co. J.—Mr. Cleary, representing the firm of Gault Brothers, opposes insolvent's discharge on the ground of fraud, in this, that the insolvent obtained credit from their creditors, knowing or believing himself unable to meet his engagments, and concealing the fact from them with intent to defraud, etc. It is true that at the time insolvent commenced business in 1865 or 1866, in Windsor, he was to a certain extent involved, a balance of a large debt incurred in 1856 still remaining due and unpaid. There was no evidence adduced, however, by opposing creditors to show that at the time their particular debt was contracted the insolvent had misrepresented his position and circumstances. The creditors rely altogether on insolvent's own statements, on oath, in his examination before the Judge, to substantiate the charge of fraud. The insolvent, however, in his examination wholly disclaims any intention on his part when the debt was contracted with Gault Brothers of obtaining credit for the purpose of defrauding them. He states that all his purchases were made through an agent at Montreal, Mr. Crawford, who was well aware of his, insolvent's, liabilities, and could afford the parties from whom he purchased all the information they could wish, as to his insolvent's, circumstances. That in no single instance did Gault Brothers or any of his creditors make any enquiries of him personally as to his standing or solvency before advancing him goods.

A discharge under the Act of 1864 may be refused for, among other things, fraud or fraudulent preferences within the meaning of the Act. By section 8, sub-sec. 7, it is provided, "that if any person whosoever in Upper Canada who purchases goods on credit, or procures advances in money, knowing or believing himself to be unable to meet his engagements, and concealing the fact from the person, thereby becoming his creditor, with the intent to defraud such person, or by any false pretence obtains a term of credit for the payment of any advance or loan of money, or of the price or of any part of the price of goods, wares or merchandise with intent to defraud the person thereby becoming his creditor, and who shall not afterwards have paid the debt or debts so incurred, shall be held to be guilty of a fraud, and shall be liable to imprisonment for such term as the court may order, not exceeding two years, unless the debt and costs be sooner paid. * * Provided always, that in the suit or proceeding taken for the recovery of such debt or debts the defendant be charged with such fraud, and be declared to be guilty of it by the judgment rendered in such suit or proceeding."