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 $950 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 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. 688; *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 (Cranworth), 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 deeditself 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