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NOTES OF CASES—*Re* CREEN.

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in possession of the property selected, of the proceeding to arbitrate upon the question of compensation, and in consequence he did not name an arbitrator, neither did he attend before or take any notice of the arbitration; and the arbitrators in fact did not take into consideration the value of his interest, or find that such interest was not of any value. The Court, at the instance of the lessee, declared that his interest had not been affected by the arbitration, and directed an inquiry as to damages sustained by him, and ordered the trustees to pay him his costs of suit.

COUNTY COURT OF THE COUNTY OF
WENTWORTH.

(Reported by JOHN F. MONCK, Esq., Barrister-at-Law.)

RE CREEN.

Insolvency—Setting aside attachment—Affidavit heading of, merely descriptive.

Upon an application to set aside a writ of attachment in insolvency, on the ground that it was issued on insufficient material, it appeared that the affidavit on which the order for the attachment was granted, made no reference to the debtor's occupation or business, except that it described him in the style of cause as a merchant, and afterwards stated that the deponent believed the debtor was insolvent within the meaning of the Insolvent Act of 1875.

Held, that the heading of an affidavit is merely descriptive, and not an allegation of fact.

Held, that the affidavit in question was defective in not stating facts sufficient to satisfy the Judge who granted the order that the debtor was a trader within the meaning of the Act.

[Hamilton, Nov. 28, 1878.]

This was an application by John Creen to set aside a Writ of Attachment in Insolvency, issued against him, on the ground that the material on which the order was granted was insufficient, and also on the merits, the petition being presented within five days after the issue of the attachment.

The following is the affidavit on which the attachment was obtained:—

“Insolvent Act of 1875, and amending Acts.

Canada :
Province of Ontario,
County of Wentworth.

The Merchants' Bank of
Canada, Plaintiffs, vs.
John Creen, of the Village
of Waterdown, in the
County of Wentworth,
Merchant, Defendant.

I, Edward Field Hebden, of the Town of Mitchell, in the County of Perth, Esquire, being duly sworn, depose and say—

1. I am the agent of the plaintiffs in this cause, duly authorized for the purposes hereof, and have full knowledge of the matters hereinafter deposed to.

2. The defendant is indebted to the plaintiffs in the sum of three thousand two hundred and forty nine (44-100) dollars currency, for the amount of a judgment recovered against him in the Court of Queen's Bench, and for which the plaintiffs hold no security.

3. To the best of my knowledge and belief, the defendant is insolvent within the meaning of the Insolvent Act of 1875, and amending Acts, and has rendered himself liable to have his estate placed in liquidation under the said Act, and my reasons for so believing are as follows:—The said defendant has permitted an execution issued against him, under which his lands and tenements have been seized and taken in execution, to remain unsatisfied for fifteen days after such seizure, and the Sheriff of the County of Wentworth has advertised defendant's lands for sale under a prior execution, and has stated that he must return the execution against goods *nulla bona*.

4. I do not, nor do the plaintiffs, act in this matter in collusion with the defendant, nor to procure him any undue advantages against his creditors.

5. The defendant resides at Waterdown, in the County of Wentworth, and I have signed.

Sworn, &c.”

Laidlaw, for the petitioner.

W. Bell, for the Attaching creditors.

SINCLAIR, Co. J.—It is urged that the affidavit does not show that Creen was at the time of issuing the attachment “a trader” within the meaning of the Insol-