COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, ESQ., *Barrister-at-Law.)*

MACKLEM v. DURRANT.

Witness—Privilege from arrest.

A witness is privileged from arrest whilst returning home after giving his evidence, and he does not lose his privilege by staying a night at the house of a friend, some distance from the place of trial, to refresh himself, if he uses reasonable expedition to return home.

[Chambers, Nov. 3, 1869.]

The defendant, who was indebted to the plaintiff, went to Michigan to reside. He subsequently returned to this country, to give evidence at a trial which took place at St. Thomas. After the trial was over, it being then too late to start for home that evening, except he went by the night train, he went to a friend's house to stay the night. To do this he had to go a few miles from the place of trial and out of the direct route homewards. He went to the station the next morning to take the first train towards his home, but was arrested on a *capias*, at the instance of the plaintiff.

J. A. Boyd thereupon obtained a summons to set aside this arrest, as being a breach of the defendant's privilege as a witness.

R. A. Harrison, Q. C., shewed cause.—The defendant deviated from his direct route towards home, and thereby lost his privilege: *Spencer* v. *Newton*, 6 A. & E., 623.

J. A. Boyd, contra.—There was no deviation. The defendant did not go out of his way on his return home; he merely went to spend the night at the house of a friend, instead of staying at an Inn, or travelling all night, and, he was at the station ready to take the first train the next morning: see *Pitt* v. *Coombs*, 5 B. & Ad. 1078; *Hatch* v. *Blissett*, Gilbert's cases, 308; Bacon's Abridgment, "Privilege;" *Meekin* v. *Smith*, 1 H. Bl. 636; *Lightfoot* v. *Cameron*, 2 W. Bl. 1113; *Webb* v. *Taylor*, 1 D. & L. 684; *Willingham* v. *Matthews*, 2 Marsh. 59; *Selby* v. *Hill*, 1 Dowl. 257, 8 Bing. 166.

GALT, J., during the argument said, that unless the rule laid down in the case cited from Gilbert's Reports was no longer law, the defendant's contention must prevail.

After deliberation the summons was made absolute, the judge remarking, that the defendant had used reasonable expedition in preparing to return home. He was not bound to leave the same evening after the trial, as, under the cases, he was entitled to rest and refresh himself. Nor was it any deviation that the defendant, instead of lodging at an hotel or inn, went out of town to stay at a friend's house; in all this he was acting within the limits of his privilege, and should not have been arrested at the station on the following morning.

INSOLVENCY CASES.

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, Nov. 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