the defendants have not the means or property sufficient to pay the said claims in full. In his other affidavit he says that the defendants have a considerable quantity of grain in a warehouse in Woodstock. That he had good reason to believe and verily did believe that the defendants were immediately about to remove and dispose of the said grain with intent and design to defraud the plaintiffs. The corroborative affidavits stated that they were acquainted with the defendants and were aware of the indebtedness, and that to the best of their knowledge and belief they were wholly unable to pay the amount of the indebtedness, and had not sufficient property or means to pay the same, and that the defendants were insolvent to the best of their knowledge and belief.

This was an application by petition presented to the judge of this court, to set aside the order and writ of attachment issued in this cause, upon various grounds stated below.

Beard, in support of the petition, objected,

1st. That the attachment was irregular in not being made returnable properly. It being made returnable on a day certain, instead of after the expiration of five days from the service.

2nd. That there were no sufficient grounds stated in any of the affidavits to warrant the issuing of the attachment, that the facts and circumstances charging the act of insolvency should be positively stated, and not according to belief.

3rd. That the plaintiffs do not show themselves to be creditors, and that they could not proceed jointly in bankruptcy on these bills. He cited Con. Stat. U. C. cap. 42, sec. 23, contending that the proceedings being in *rem* and not in *personam*, they were not authorized by this act.

4th. That there was not any debt due, because the liability on the bills was merged in the mortgage given by the defendant Eaton, 30th Nov., 1866. He cited *Price* v. *Moulton*, 10 C. B. 573; *Mattheson* v. *Brouse*, 1 U. C. Q. B. 272.

5th. That after an adjudication the grounds cannot be shifted, 30 L. T. O. S. 106; 10 Ves. 286; 9 Ves. 207; 10 Ves. 290; Ex. Sa. 9 L. T. N. S. 120.

6th. That the adjudication cannot be supported because the debt has been secured to plaintiffs to the full amount. Sec. 5, sub-sec. 5 of the Act of 1864. That the plaintiffs are out of court, having full security. As to the value of the security, he referred to the affidavits filed, that the plaintiffs required it to be insured to the amount of $7,000, which showed the value they placed upon it. That our act was *pari materia* with the English Act, 24 and 25 Vic. cap. 134, sec. 97, sub-sec. 1. That these securities, being recent, repelled any presumption of fraud as to the dealings of the defendants with regard to the rest of their property.

7th. That the plaintiffs cannot maintain the adjudication, because they have given time, and that the short form of mortgage given in the statute 27 and 28 Vic. cap. 31, shows that time was given, Tudor's L. C. 260; that the clause showing that the mortgagee is to have possession, pp. 220, 216, 223 of the Act, shows that the plaintiffs did give twelve months time, and the proviso means that they would give further time after the expiration of the twelve months.

8th. That the affidavits show that the Royal Canadian Bank was to make certain advances, and the affidavit of Mr. Burns, shows, that under the warehouse receipts, the grain in store was secured to the Royal Canadian Bank for advances. That the sale was valid under the two acts recited therein, and vested the property in the Royal Canadian Bank, and showed there was no fraud. As to what is an act of bankruptcy, he cited *Tims* v. *Smith*, 1 Hil. & C. 849; *Whitman* v. *Claridge*, 9 L. T. N. S. 451; *Exp. Colmaere* v. *Colmaere*, 13 L. T. N. S. 621; *Buckliston* v. *Cook*, 6 Coll. & B. 297; *Farrell* v. *Reynolds*, 11 C. B. N. S. 709. That the sale was not a sale of all the property, but of part, and not to secure an antecedent debt, but to secure advances.

Ball, and with him, *Richardson*, contra, contended that under the amended act, the judge may name a day for the return of the attachment, but if the return day was wrong, he asked to amend, as in *Re Owens*, 3 U. C. L. J. N. S. 22; that the form "F." only requires the party to swear to his belief, as to the facts and circumstances, and that having complied with the requirements of the act in this respect, the affidavits were sufficient; that the defendants had an interest in the grain which might be attached; that the statute 22 Vic. 642, shews that the defendants were jointly liable on the bills, and the affidavits showed that they were partners as to the grain. (Mr. Ball put in two bills of sale, one made by McWhirter to White for $250, and one by Eaton to T. J. Clark for $600, to which Mr. Beard objected, on the ground that they did not relate to any question in issue. Mr. Ball cited *In re Lilbun*, 12 L. T. N. S. 209; *Graham* v. *Chapman*, 12 C. B. 85.) That as to the merger the bank had the right, under 25 Vic. cap. 416, to take additional security for the payment of their bills, without loosing their remedy on the bills; that the grain did not become the property of the Royal Canadian Bank, till the debt becomes due; that the warehousemen were the parties removing the grain; that the receipts were not indorsed as meant by the statute; that the stuff must be in store, and that the bank cannot take security on property not in *esse*. See schedule H.

McQueen, Co.J.—I do not see that the petitioners have been in any way prejudiced by the attachment being made returnable on the 22nd March, a day certain instead of after the expiring of five days from the service thereof, as the Amendment Act 29 Vic. cap. 18, sec. 8, provides, as it appears from the date of the service thereof on the petitioners. They have had the advantage of having the period for presenting their petition extended, by the irregularity. The irregularity may now be amended, and the plaintiffs are at liberty to amend if they think proper to do so. *Re Owens*, 3 U. C. L. J. N. S. 22.

The adjudication, if the *fiat* for the attachment may be termed such, is not, I am inclined to think, founded on sufficient materials to support it. The 7th sub-sec. of sec. 3, is, that in case any creditor by affidavit (form F.) shews to the satisfaction of the judge that he is a creditor of the insolvent for a sum of not less than $200, and also shews by the affidavit of two credible persons, such facts and circumstances as satisfy such judge that the debtor is an insolvent within the meaning of this Act, and that his estate has become subject to compulsory liquidation, such judge may order the issue of a writ of attachment, &c. Sec. 3 and its sub-sec., and sub-sec. 2 and 3 of sec. 3, point out the different cases in which a debtor shall be deemed insolvent and his estate shall become subject to compulsory liquidation.