John Patterson, contra, contended that the judge had given no judgment, and had expressly postponed his decision to enable the *certiorari* to be applied for; he had merely expressed an opinion. He cited *Paterson* v. *Smith*, 14 C. P. 525.

RICHARDS, C. J.—On principle I do not think this case ought to be removed from the Division Court. If the case was one fit to be tried before the judge of that court, the mere fact that he may have formed and expressed an opinion which was erroneous, is no ground for taking the case into a superior court. The defendant knew all the facts of the case before the day of trial, and if it was considered it ought to have been removed from the Division Court, steps should have been taken for that purpose before it was heard.

It seems to me to be an unseemly proceeding, that the defendant, after having argued the matter before the judge, and obtained his opinion, and having had the case adjourned for the purpose of furnishing new authorities, and, after consideration of these authorities, the judge had expressed an opinion, that the case should then be taken out of his jurisdiction by a *certiorari*. The fact that the judge himself may have been willing or even desirous to have the case disposed of in the superior court can make no difference. After he has taken on himself the burthen of disposing of the case, having heard the evidence and expressed his opinion, I do not think, as a general rule, a *certiorari* ought to issue. The cases of *Black* v. *Wesley*, 8 U. C. L. J. 277, and *Gallagher* v. *Bathie*, 2 U. C. L. J. N. S. 73, seem to me to lay down principles inconsistent with removing this case. The case of *Paterson* v. *Smith*, 14, C. P. 525, does not, I think, lay down any doctrine contrary to that of the other cases referred to, for although there had been an abortive attempt to have a trial, there was no verdict, and the court no doubt looked at that case in the same way as if no jury have been sworn at all.

I think the summons should be discharged on the grounds I have mentioned, but as the learned judge of the County Court delayed the entry of judgment to enable the defendant to make this application, it will be without costs. I arrive at this conclusion as to the costs more readily from the fact that one of the affidavits filed on behalf of the plaintiff states the belief of the deponent that the attorney for the defendant speculated on the chance of getting a decision in his favour, and, it being against him, he now makes this application. I do not see how this statement thus made was calculated to be of any service to the plaintiff; the way in which it is made is not likely to keep up kindly feelings between professional gentlemen practising in the same town. No particular grounds seem to be referred to in the affidavit as justifying the belief expressed, though no doubt the person making the affidavit entertained such belief. If the facts stated in the affidavit justify the inference, it will generally be better to place that inference before the Court as a matter of argument and conclusion to be drawn from facts, rather than as a fact in the affidavit, which the deponent swears he believes.

Summons discharged without costs.

JOHNSTON v. ANGLIN.

Arbitration—Enlarging time for making award.

An arbitrator having failed, owing to the loss of the papers in the cause, in making his award within the time limited, a Judge extended the time under Con. Stat. U. C. cap. 22, sec. 172.

[Chambers, Feb. 22, April 5, 1869.]

In this case a verdict was taken for the plaintiff subject to be increased or reduced or verdict entered for defendant, by the award of an arbitrator, to whom power was given to enlarge the time for making his award. The arbitrator within the extended time endorsed on the order of reference for making the award, heard all the evidence produced on both sides and the addresses of counsel, and took all the papers to make up his award. It further appeared from the affidavit of the arbitrator that before he was enabled to make his award, the papers connected with the said arbitration and filed with him by both parties were mislaid, and he said that it was owing to papers being thus mislaid that he did not make the award or extend the time for that purpose: that the papers having since been found he was then willing to make his award in the premises if the Court would extend the time so as to enable him to make the same.

The last enlargement of the time for making the award was until 1st May, 1867.

In February, 1869, the defendant obtained a summons calling on the plaintiff to shew cause why the time for making the award under the order of reference at *Nisi Prius* should not be enlarged for two years from the first day of May, 1867, the time for making an enlargement of said term having elapsed without such enlargement having been made.

The application was founded on the affidavits of the arbitrator and the defendant's attorney.

Harrison, Q. C., shewed cause, citing *Re Burdon*, 27 L. J. C. P. 250; 31 L. J. Rep. 164; *Doe d. Mays* v. *Connell*, 22 L. J. Q. B. 321.

O'Brien, contra, referred to Con. Stat. U. C. cap. 22, sec. 172; *Russell* on Awards, 141 *et seq.*; *Leslie* v. *Richardson*, 6 C. B. 378.

MORRISON, J., made an order extending the time as asked in the summons.

INSOLVENCY CASES.

(Before the Judge of the County Court of the County of Wentworth.)

[*Reported by* S. F. Lazier, Esq., *Barrister-at-Law*]

IN RE LAWSON BROTHERS, INSOLVENTS.

Insolvency—Deed of Composition and Discharge.

Held, 1. That a deed of composition and discharge under sec. 9 of the Insolvent Act of 1864, purporting to be between the majority of the creditors of $100 and upwards of the first part, and the Insolvents of the second part, is valid, though the *non-assenting* creditors were not specially made parties to the deed.

2. A creditor who has accepted the terms of a deed of composition cannot afterwards contest the confirmation of the Insolvents' discharge.

3. The debt of a secured creditor who has elected to accept his security in full of his claim, and obtained the consent of the assignee to such election, is not to be estimated in considering the amount of indebtedness.

[September 7th, 1869.]

This was an application by the insolvents to the Judge of the County Court of the County of Wentworth for a confirmation of the deed of