

third Section of the Act of 1849, chaptered 42, to abolish imprisonment for debt, and for the punishment of fraudulent debtors in Lower Canada, and for other purposes, or under any other provision of the said Act, from any Defendant arrested on a Writ of *Capias ad respondendum*, and being either in custody or under bail to the Sheriff, and to cause the sureties to justify their sufficiency on oath before him, and to administer such oath, and to order the release of such Defendant or the discharge of the bail to the Sheriff, on the perfecting of such security.

XLVI. If in an affidavit for obtaining a writ of *saisie arret* before Judgment under the tenth section of the ordinance 27 G. 3, c. 4, or a writ of *capias ad respondendum*, under the said Act of 1849, in addition to the allegation that the Defendant is personally indebted to the Plaintiff in the sum required by the said Act or by the said ordinance, as the case may be, it shall be alleged upon grounds specially stated in the affidavit that the Defendant is a trader, that he is notoriously insolvent, that he has refused to compromise or arrange with his creditors, or to make a *cession de biens* to them or for their benefit, and that he continues to carry on his trade, such debtor shall then be held to be about to secrete his goods and chatels with intent to defraud his creditors generally, or the Plaintiff in particular, and a writ of *saisie arret* before judgment for attaching his estate, debts and effects, may issue under the said ordinance, and a writ of *capias ad respondendum* for arresting such Defendant, may also issue under the said Act :

Provided always, that if upon summary petition of such Defendant, it be proved to the satisfaction of any Judge of the said Court sitting at the place where such writ of *capias ad respondendum* issued, that when the said affidavit was made, such defendant was not a trader, or was not notoriously insolvent, or had not refused to compromise or arrange with his creditors, or to make a *cession de biens* to them or for their benefit, or was not continuing to carry on his trade, then the Defendant shall be discharged from custody by the order of such Judge.

XLVII. If any personal hypothecary debtor or *tiers détenteur* in possession of any immoveable property on which there exists any privileged claim or hypothec, personally or by the intervention of others, wilfully and with intent to defraud the party having such privileged claim or hypothec, injures, wastes or diminishes the value of such property by destroying, carrying away, or selling any house, outhouse or building or deteriorating the same, or by destroying, carrying away or injuring any timber or fence, or any fixture in any house or building on the said property, he may be sued in damages by such privileged or hypothecary creditor whether the sum secured by such privilege or hypothec be or be not then payable or exigible,

der sect. 3, of
12 V. c. 42.

What affidavit shall be sufficient for arrest of a trader defendant and for attachment of his goods.

Proviso: if the affidavit be shown to be untrue.

Remedy in damages given against persons wasting or injuring property subject to hypothec.