judgment, and others of the same nature, and that they cannot constitute themselves judges of the sufficiency or insufficiency of such affidavit. The demurrer was dismissed, Mackay, J., considering the declaration if proved, sufficient to justify a judgment. From this decision, therefore, it would appear that an action of damages lies for the issue of special writs "illegally, and without reasonable or probable cause."

The defendants also pleaded to the merits, that at the time of the seizure, the question as to whether a seaman had a right to obtain a *saisie conservatoire* for his wages, due on the last voyage, was controverted; and that the defendants had acted in good faith, "*de bonne foi et sans négligence ou impéritie.*" At the *enquête* two of the prothonotaries were examined. One, Mr. Papineau, who has since retired from office, disclaimed any discretion in the matter. He said: "We consider the affidavit as the work of the deponent and the lawyer, *and we do not read it*, considering ourselves responsible only for the jurat and the manner of administering the oath." Mr. Hubert, however, who was also interrogated as to the practice, replied: "Since I have been one of the prothonotaries, I have never, as a general rule, received affidavits for special writs, such as *saisie arrêt* before judgment or revendication, without examining and reading them."

The Superior Court, Torrance, J., dismissed the action, the principal motive being: "considering that the plaintiffs have failed to prove that the *saisie-arrêt* before judgment set forth in the declaration, was issued without any reasonable or probable cause." And the point was further elucidated by the following remarks of the learned judge in pronouncing the judgment: "The function which the prothonotary performed here, may be regarded as a *quasi* judicial one, and in a case of *Carter & Burland*, the Court has already to-day decided that a magistrate is not liable where there is no malice or misconduct on his part. Broom's Maxims show that even inferior magistrates cannot be called into question for a simple error. It is better that an individual should occasionally suffer wrong than that the course of justice should be impeded by constant apprehension on the part of those who have to administer it. The question raised here as to the issue of the *saisie-arrêt* is one upon which different judges have held different views, and is it to be said that a prothonotary is liable because he does not refuse to give out a warrant of *saisie-arrêt* on what at least appeared to be a sufficient affidavit?"

The case was taken to appeal, and very ably argued by Mr. Girouard, on behalf of the appellants. It was urged that Mr. Papineau in issuing these special writs, without even taking the trouble to read the affidavits, was guilty of gross neglect, for which, if he was a mere ministerial officer, he was answerable; and, on the other hand, if it were held that he was acting in a judicial capacity, he had exceeded his jurisdiction, and should likewise be held answerable. The judgment, however, was affirmed; the Court holding that although the Prothonotary had apparently acted without sufficient circumspection, yet he had not acted in bad faith, and was, therefore, not accountable.

The principle deducible from this decision seems to be, that while the prothonotary is bound to exercise a certain degree of care, he will not be held liable in damages, unless bad faith or very gross carelessness be proved against him. Perhaps this is the safest rule that could be laid down. If prothonotaries were to be held liable for erroneous judgments, the inconveniences arising from their refusal to act, might be greater than those proceeding from ill-advised or hasty action. They would in cases of difficulty require time to deliberate, and to consult authorities and counsel, and the ordinary difficulties of overcoming official *inertia* would be vastly multiplied. We may remark, in conclusion, that those who wish to see in what cases judges, or those acting in a judicial capacity, are responsible, will find a full examination of the question in the case of *Lange* v. *Benedict*, ante, pp. 337, 341.

According to statistics published in the Boston *Commercial Advertiser*, the number of bankruptcies filed under the late bankrupt law, from the time it went into operation, June 1, 1867, to August 31, 1876, was 103,005, of which 15,151 were in the Eastern States, 24,534 in the Middle States, 22,780 in the Southern States, 40,096 in the Western States, and 433 in the District of Columbia.