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TRADERS CONTESTING WRIT OF COMPULSORY LIQUIDATION.

We inserted last week a note of a decision in the case of *Anderson v. Gervais*, in which the Court held that it had no jurisdiction to permit a trader, against whom a writ of compulsory liquidation had issued, to continue his trade while the contestation of the attachment was pending. This decision was opposed to one rendered in 1876 in *Fisher v. Malo*, Rainville, J., in which it was held that the Judge may, under special circumstances, permit the insolvent to continue his trade. In that case the writ of compulsory liquidation had been quashed, but an appeal had been taken from the judgment. The Court held that the judgment had the effect of giving back to the trader the possession of his effects, and he was allowed to continue his trade while the case was pending in Review. This decision has been followed by the Court of Review in *Anderson v. Gervais*, the decision noted last week being reversed. The Court of Review holds that a trader may be allowed to continue his business, pending proceedings to set aside a writ of compulsory liquidation, on giving security to the full value of his stock.

LIABILITY OF PROTHONOTARIES.

In connection with certain recent proceedings affecting an insolvent estate, an interesting question has arisen as to the liability of prothonotaries in issuing special writs, such as *saisies-arrêts* before judgment, or *saisies-conservatoires*. Is a prothonotary bound, on the production of an affidavit, to allow the writ to issue, or is it his duty to examine the affidavit, and determine whether the allegations are sufficient to justify the demand? And again, if it be assumed that he is bound to examine the affidavit, is he responsible for the damages which may have been caused by a seizure based on an insufficient affidavit?

These important questions received considerable attention in a case decided by the Superior Court in Montreal some years ago, and affirmed

in appeal. We refer to the case of *McLennan et al. v. Hubert et al.*, in which the joint prothonotary was sued in damages under the following circumstances: A sailor, named Marcile, claimed the sum of \$7.25 to be due to him for wages, by one Couvrette, captain of a barge, and he made an affidavit of which the following is a literal translation: "That the defendant is indebted to him in the sum of seven dollars and twenty-five cents, being for wages as sailor on board the barge bearing the name of —, and that said barge is on the point of leaving the Port of Montreal, to go to the United States of America, and that without the benefit of a *saisie arrêt* before judgment to seize and arrest the said barge, its equipment and cargo, the plaintiff will lose his debt and suffer damage." This affidavit was presented to Mr. Papineau, one of the defendants, as joint clerk of the Circuit Court, on the 4th September, 1871, and thereupon he ordered the issue of a writ of *saisie arrêt* before judgment, commanding any bailiff of the Superior Court "to seize and arrest all the goods, debts and effects of Albert Couvrette, barge captain, of the Parish of Ste. Cecile, District of Beauharnois, and particularly a barge and its equipment and cargo; said barge known under the name of "Guard," presently in the Port of Montreal." The seizure was made while the barge "Guard" was one of ten which were being towed by a steamer through the Lachine Canal, and a detention of ten hours was caused to the whole tow. This, it was established, entailed a loss of about three hundred dollars on McLennan & Co., the proprietors of the barges, viz.: twenty dollars for each barge, and one hundred dollars for the steamer. The attachment was quashed by the Court, on the ground that the affidavit did not contain the essential averments required by law for the issuing of a writ of attachment, and the proprietors of the barge then gave the prothonotary notice of an action to recover the damages occasioned to them by the seizure, alleging that the prothonotary had acted "illegally and without reasonable or probable cause."

The action was met in the first place, by a demurrer, alleging that the prothonotary and clerk are bound, on the demand of the plaintiff's attorney, accompanied by an affidavit *serieuse et de bonne foi*, to issue writs of *saisie arrêt*, before