remedy for the protection of his rights. For these reasons, although the case (which, so far as I know, now presents itself for the first time,) is not free from difficulty, I deem it my duty to reject the motions of the defendants to quash the *saisie-revendication*.

Motions rejected.

Hon. G. Irvine, Q.C., for plaintiff.
Mr. Bossé, Q. C., for defendant.

Montreal, Jan. 31, 1878.

DUNKIN, J.

BELL v. HARTFORD FIRE INSURANCE CO.

Conventional Prescription—Interruption—Tender.

Held, that a tender (not accepted) of money by an insurance company in settlement of a loss is not an interruption of the conventional prescription of one year under the policy.

The plaintiff sued to recover a loss under a contract of fire insurance. An interim receipt had been granted, but the fire occurred before the policy issued. The Company, defendant, among other grounds of defence, set forth that the interim receipt was given subject to all the conditions of a future policy; that of these one was that no proceeding for recovery of a claim should avail unless commenced within twelve months after the loss, "and should any suit or action be commenced later, the lapse of time shall be taken and admitted as conclusive evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding"; and prescription was pleaded accordingly.

The plaintiff answered this plea by saying that the Company, on the 18th April, 1874, (within the year after the loss, and also within a year before action brought) tendered him $587.15, and that the term of the conventional prescription set up by the first plea was thereby extended so as to count from that date, and therefore did not avail as against this suit.

On this point, the following remarks were made by

DUNKIN, J. As to the first question, the Court is not prepared to say that conventional prescription is not liable to interruption. It may be or may not be, according to the precise circumstances of each case. The clause here invoked as creative of it is very strongly drawn —"no suit shall be sustainable unless commenced within 12 months next after the loss shall have occurred"; and if commenced later "the lapse of time shall be taken and admitted as conclusive evidence against the validity of such claim, any statute of limitation to the contrary notwithstanding." Interruption against this is claimed simply by reason of a tender of money made unconditionally, and as unconditionally at once refused. Such tender was an indiscretion from the present point of view of the Company defendant. But it took place months before the expiration of the year, and neither caused nor tended to cause delay as to prosecution of the claim. On the whole, the Court fails to see in it any interruption of the prescription here in issue.

Action dismissed.

Judah, Wurtele & Branchaud for plaintiff.
Carter & Keller for defendants.

Montreal, Feb. 5, 1878.

RAINVILLE, J.

HILYARD v. HARMBURGER.

Affidavit under Sec. 105, Insolvent Act of 1875—Prothonotary.

The affidavit required for a writ of attachment under the Insolvent Act may be sworn before the Prothonotary or his Deputy, notwithstanding the omission to include this officer in the enumeration in Section 105 of the Act.

Keller for plaintiff.
Kerr & Carter for defendant.

COURT OF QUEEN'S BENCH.

Montreal, Jan. 29, 1878.

Present: DORION, C. J., MONK, RAMSAY, TESSIER, and CROSS, JJ.

ROBERTSON et al. (plffs. below), Appellants; and LAJOIE (deft. below), Respondent.

Warehouse Receipts—Warehousemen—Pleading.

Held, 1. That a document in the following form was a warehouse receipt, and not a mere delivery order:—

"Received from Ritchie, Gregg, Gillespie & Co., on storage, in yard Grey Nun Street, the following merchandize, viz.:—

"(300) Three hundred tons No. 1 Clyde Pig Iron, storage free till opening of navigation,

"Deliverable only on the surrender of this receipt properly endorsed.

"Montreal, 5th March, 1873."

THOMAS ROBERTSON & Co.