the Superior Court condemned the defendant to pay $1508, being the amount of the debt, interest and costs in the suit against Hill & Co. From this judgment the present appeal was instituted.

MEREDITH, J., said that after examining the case carefully, the Court was of opinion that the letter in question was a sufficient letter of guarantee; and, secondly, that the evidence was sufficient to show that the debt claimed was for goods delivered under the letter of guarantee.

MONDELET, J., was of opinion that the proof fully established that the furniture would never have been entrusted to C. F. Hill & Co., by plaintiff, except on the faith of the letter of guarantee.

Judgment confirmed unanimously.

Day & Day for appellant; Cross & Lunn for respondent.

McPHEE (plaintiff *par reprise d'instance* in the Court below,) appellant; and WOODBRIDGE (defendant in the court below) respondent.

HELD—*That an action directed against an executor, to recover moneys received by him on account of the estate, must be in the form of an action to account, even though the plaintiff claim but one sum as due to the estate.*

This was an appeal from a judgment of the Superior Court, rendered by Mr. Justice Loranger, dismissing the plaintiff's action. The action was instituted in the name of John Rankin, as curator to the vacant estate of the late Duncan Campbell, against the widow of Dr. Alexander, one of the executors of Duncan Campbell, to recover £1582 said to have been received by Dr. Alexander as executor. There had been three executors, and these executors in 1832 had sold a lot of land for £730, of which £175 was paid down. Two of the executors died, but Dr. Alexander, it was alleged, continued to receive the interest on the balance of purchase money up to 1858, when he also died. The plea of defendant was that she was not liable to plaintiff, because his appointment as curator was null. That the estate of Duncan Campbell was not vacant, he having named universal legatees in his will, to whom the executors jointly were liable to account for their gestion. Rankin having resigned his curatorship, Norman McPhee was appointed curator, and took up the *instance*. The action was dismissed on the ground that universal legatees had been appointed by the will of Duncan Campbell, and there was no proof in the record, that his succession had become vacant, and therefore the nomination of plaintiff as curator must be looked upon as null. From this judgment plaintiff appealed, submitting that the *onus* of proof to establish the nullity of plaintiff's appointment as curator lay upon defendant, and that the action was in reality an action to account, being brought for the only sum due the estate.

DRUMMOND, J., said the Court did not feel called upon to pronounce any opinion on the validity of the plaintiff's appointment as curator. For his own part, it seemed to him that in most cases the curator ought to be looked upon as the legal representative of the estate till the *curatelle* had been set aside. But there might be cases in which it would be evident on the face of the papers, that the appointment had been improperly made. The judgment must be confirmed on the ground that the action was brought for a special sum. An action could not be properly brought against an executor for a special sum of money; for though it might be true that he had received £500, yet he might have spent £10,000. The proper action was an action to account. The judges were all agreed on this point.

Judgment confirmed unanimously.

Cross & Lunn for appellant; A. & W. Robertson for respondent.

OUIMET (defendant in the Court below), appellant; and GAMACHE (plaintiff in the Court below), respondent

Question of evidence.

This was an appeal from a judgment awarding plaintiff £61, for plastering, &c., done to a church. The plea to the action was that the plaintiff had undertaken all the work required to be done for the stipulated price of 13d. per yard, including the Gothic work, &c., which price had been paid to plaintiff. The answer to this was that the plaintiff was entitled to double the ordinary rate for Gothic work. Evidence was adduced, the plaintiff's witnesses stating that the usage was to allow double for Gothic work, and the defendant's witnesses alleging the contrary. Judgment being rendered in favor of plaintiff in the Court below, the defendant appealed.

MONDELET, J., was of opinion that the proof made by plaintiff was not sufficient to establish that he was entitled to double for the Gothic work. The judgment of the Court below must therefore be reversed, and the action dismissed.

Judgment reversed unanimously.

Loranger & Loranger for appellant; L. Ricard for respondent.

GIARD *et al.*, *es qualités* (plaintiffs in the Court below), appellants; and LAMOUREUX (defendant in the Court below) respondent.

HELD—*That when one of the defendants o an action on a promissory note proves that the note has been paid, the action should be dismissed as to both, though the other defendant made default.*

This was an appeal from a judgment of the Court of Review at Montreal on the 25th of January, 1865, reversing a judgment of the Circuit Court at Sorel. The action was brought on a promissory note against the defendants, of whom the respondent was one, by the plaintiffs in their quality of testamentary executors of the payee. One of the defendants, Dandelin, pleaded prescription and payment, but the other (now respondent) made default. The judgment of the Circuit Court at Sorel dismissed the plea of payment raised by Dandelin, but held that the action was barred by the five years' prescription, and dismissed the action