ed if the order is served upon them. If it were otherwise, in a case below $80, a defendant might give bail, under Art. 825, to surrender, and then leave the country and snap his fingers; but under the law, as I hold it, he cannot do so, for whether he remains here to be served with the order or not is quite immaterial, if it is served on the sureties; and as he cannot be compelled to make his abandonment, the sureties themselves are interested in having this order granted, so that he may be induced to give up his property, and liberate himself and them also. I may observe, the provisions of the statutes are not repealed by the code, but on the contrary, are expressly preserved by Articles 2274 and 2275 C.C. Judgment confirmed.

Wurtele & Sexton, for plaintiff.

Doutre, Branchaud & McCord, for defendant.

SICOTTE, JOHNSON, LAFRAMBOISE, JJ.

In re MIDDLEMISS, insolvent, DARLING, assignee, JACKSON, collocated, LEDUC, contesting.

[From S. C., Montreal.

Hypothecary Creditor — Acceptance of delegation without releasing the original debtor—Restriction of the hypothec to a portion of the land.

This case came up on a contestation by Leduc of a collocation in favor of Jackson on the proceeds of certain real estate of the insolvent Middlemiss, sold by his assignee.

Leduc sold to Rice a parcel of land on which there was a hypothec in favor of Brodie (now represented by Jackson), and Leduc had made himself personally liable to Brodie for the amount. It was stipulated in the deed of sale that Rice should pay Brodie the amount of his claim. Brodie accepted the delegation, but without discharging Leduc. It was further stipulated in the deed that Rice should have the right of discharging any portion of the land from Leduc's hypothec for the unpaid balance of *prix de vente*, by paying at the rate of $400 per arpent of the portion discharged. Rice subsequently sold the land to Middlemiss, who, exercising the right of discharge which had been stipulated in the deed to his *auteur* Rice, paid a sufficient sum to Leduc on account of the purchase money, to release half the property from Leduc's hypothecary claim. Middlemiss also obtained from Brodie the release of the same portion of the property from Brodie's hypothec, which Brodie restricted to the remaining half. Middlemiss then disposed of the half so released from mortgages by exchanging it for other property. Subsequently he became insolvent, and the remaining half of the land, which he had retained, being sold by the assignee, Leduc contested Brodie's right to be collocated by preference to him on the proceeds.

JETTÉ, J., in the Superior Court, held that Brodie having accepted the delegation without discharging Leduc, novation did not take place; and the release by Brodie of half the land applied only to his hypothecary claim thereon, and did not affect Leduc's personal liability for the amount of Brodie's claim. Brodie (or his assignee Jackson) was, therefore, entitled to be collocated by preference to Leduc.

In Review, this judgment was unanimously confirmed.

Keller & McCormick for Jackson, collocated: *Wurtele, Q.C.*, counsel.

T. & C. C. DeLorimier for Leduc, contesting.

SUPERIOR COURT.

MONTREAL, Nov. 29, 1879.

PERRY v. PELL.

Saisie-arrêt before judgment not be used to compel dilatory debtors to pay doubtful debts.

JOHNSON, J. This is an action for damages for issuing a writ of attachment without probable cause. The plaintiff, being about to change his residence, advertised his household furniture for sale, and the defendant who had an account against him, and could not get paid, made an affidavit such as the law requires to get an attachment before judgment, and took his writ and sent the bailiff to seize the property; the money was paid; and afterwards Mr. Perry brought his action to test the right of the defendant to take this severe recourse against him under the circumstances. The case was very well argued before me on both sides, as to the probable grounds for the proceeding which is complained of; but it struck me at the argument that it had to be disposed of on a very plain principle that I had seen equally