

mony was irrelevant except in so far as it explained the surrounding circumstances, and that even if it should be considered, the writings so strongly tended to confirm defendant's evidence as to entitle him to prevail.

Held, also, that under the agreement defendant would be liable for money had and received to the extent he can be proved to have received it up to \$500. New trial with leave to plaintiff to amend his declaration.

F. St. John Bliss, for plaintiff. *F. B. Carvell*, for defendant.

En Banc.]

BENNETT v. CODY.

[Feb. 22.

County Court action—Striking out notices of defence.

In an action of trover in a County Court defendant pleaded the general issue and gave notice of defence, that the goods in question were taken and sold under an execution issued out of a parish court upon a judgment against the plaintiff's husband, whose property, the notice alleged, they were. Plaintiff applied to the County Court judge to strike out the notice on the ground that the facts stated therein could be given in evidence under the general issue. The County Court judge refused the application with costs.

Held, on appeal, without deciding whether the defence set up by the notice would be available under the general issue, that as no possible injury could fall on plaintiff by allowing the notice to stand excepting the trifling additional costs, which might be taxed against him for such notice in the event of defendant succeeding, that the County Court judge exercised a wise discretion in refusing the application, though the costs of opposing ought not to have been allowed in view of the objectionableness of the notice on the ground of extreme prolixity. Appeal dismissed with costs.

J. R. Dunn, for appeal. *H. W. Robertson*, contra.

En Banc.]

ANDERSON v. SHAW.

[Feb. 22.

County court appeal—Costs—Set-off against judgment and cost in County Court.

The defendant appealed to the Supreme Court from an interlocutory order of the judge of a County Court setting aside notices of defence in an action for false imprisonment and had his appeal allowed with costs. Subsequently the plaintiff recovered judgment in the action in the County Court and the defendant applied to the County Court judge for an order setting off his appeal costs against the plaintiff's judgment and certain other costs which he was awarded on an interlocutory proceeding in the action in the County Court. The plaintiff's attorney resisted the application on the grounds: 1, that the County Court judge had no power to make the order; 2, that the attorney's lien was paramount; 3, that the plaintiff having agreed with his attorney that the latter should have the amount of the damages recovered by such judgment for his services in obtaining his discharge from