ered by Tessier's mortgage upon the land, and by pre-existing mortgages. There was nothing on the face of the record to show that there was any fraud in the matter. The judgment would be confirmed.

SUPERIOR COURT.

MONTREAL, 30th Sept., 1865.

MONK, J.,

WISHAW *v* GILMOUR *et al.*—This was an action for a balance of account. The defendant had produced an account between Mr. Wishaw and Gilmour & Co., by which account it appeared that considerable sums of money had been paid from time to time by Mr. Gilmour to the plaintiff. These payments were no doubt made during the existence of the old firm. A balance remained of £525, which plaintiff contended that he was entitled to receive. Defendants alleged that across the face of the account there was an entry, "*settled in full, A. Heward.*" Plaintiff declared that there was no date to this, but Mr. Heward had been brought up and swore positively to the time. The plaintiff's action must therefore be dismissed with costs.

WATTS *et vir v.* PINSONNEAULT.—This was an action against the defendant for injury done to the property of plaintiffs by defendant's tenants throwing out all kinds of filth on their property. The contradiction of testimony was such that it was utterly impossible to determine whether the dirty water was thrown from the Cosmopolitan Hotel or from the defendant's place. The defendant, however, had stepped in and relieved the Court from all anxiety on this head by acknowledging his responsibility. He had bricked up his windows, and thus rendered the repetition of the offence utterly impossible. He had done more; he had acknowledged his responsibility for the ceiling, and the injury inside the house. He had even gone further. When this action was taken out, the tenant made the repairs, and the defendant had acknowledged the justice of the account and had paid it. The whole case was thus covered. The defendant having obtained leave to plead after default entered against him, and paid all costs up to that time, the action should have been stopped at once. Instead of that the plaintiffs had gone on. The action must, therefore, be dismissed with costs.

CANTIN *v.* VIGNEAU.—The plaintiff had taken out a *saisie-arrêt* against the captain of a boat. It was not the captain of the boat at all, it was the owner. The whole proceeding was full of irregularities, and the *exception à la forme* must be maintained, and the *saisie-arrêt* set aside.

FOULDS *et al. v.* MCGUIRE.—The defendant becoming embarrassed, the plaintiff, one of his creditors, urged him to make a settlement, and they agreed that 50 cents on the dollar was to be the amount of the composition. The plaintiff showed himself very active, sent for the creditors; got them into his office; the defendant was directed to withdraw, and the result of the interview was that the creditors agreed to accept the composition. Now the plaintiff brought his action for the whole amount, saying that he never intended to take 50 cents, because he had other security which he had no intention of abandoning. The Court saw nothing in the evidence to sustain plaintiff's pretensions, and the action must be dismissed.

DEDNAM *v.* WOOD.—An action *en séparation de corps*. The facts were not of a character to admit of much discussion. The prayer of the declaration must be granted.

RAPHAEL *v.* MCDONALD.

HELD—That it is not necessary to allow the ordinary delays with respect to service of declaration at the prothonotary's office, under C. S. L. C., C. 83, Sec. 57.

This was a case in which a *capias* issued, directed to the Sheriff, and to him alone. The Sheriff was directed to take the body of the defendant, and he did so. The defendant was arrested on the 30th April under this *capias*, and on the 7th June, in vacation, service of the declaration was made at the prothonotary's office by a bailiff who returned the certificate of service to the Sheriff, and the Sheriff returned the whole of the proceedings to this Court. Upon this the defendant fyled an *exception à la forme* in which he says, in the first place, that there was no legal service of the declaration at the prothonotary's office, and not only was the proceeding defective in that particular, but the writ was returned into Court three or four days after the declaration was left at the prothonotary's office. As to the first point, the service by a bailiff was a perfectly good service. On the second point, it was contended by the defendant that ten days must elapse between the time the declaration is left at the prothonotary's office and the return of the writ. Now the law specified no delay between the leaving of the declaration and the return of the writ. It merely said, "service of the declaration may be made on the defendant either personally or by being left at the office of the prothonotary or clerk of the Court, at any time within three days next after the service of such writ, if the same have issued in term, or within eight days next after such service if the writ has issued in vacation." C. S. L. C., P. 721. The *exception à la forme* must be dismissed.

CIRCUIT COURT.

MONTREAL, 30th Sept., 1865.

BADGLEY, J.

BRAHADI *v.* BERGERON *et al.*

HELD—That the usual delays for ordinary services must be allowed between service of copy of declaration at the prothonotary's office, and return of the writ in cases of attachment under C. S.L. C., Cap. 83, Sec. 57.

In this case an attachment was issued, and on the 4th May three copies were deposited at the prothonotary's office for the three defendants. Now the writ was returned on the 8th May, so that there were only four days between the service and the return. This service was by virtue of the statute which allows service of the declaration to be made at the office of the prothonotary within three days after ser-