cedure allows proceedings in favor of mortgage creditors against lands, the proprietors of which, are uncertain or unknown. We have had that law for over 25 years. The corporation commenced proceedings under it on the 19th July, 1880, having a privilege for some arrears of assessments due by the proprietor of lot No. 593 of St. Ann's Ward, whoever he might be. They commenced by a petition that they had in good faith made enquiry and diligence to find out the owner's name, and this is sworn to. The Corporation has actually sold the land by a *décret*.

Now, Loignon comes in and claims the land, and says that he has always been the known owner of it, and so named in the *Livre de renvoi*, part of the cadastral plan of St. Ann's Ward, that the city had no right to the benefit of the Art. 900, and asks that all their proceedings be set aside, including the seizure and sale. In his petition he sets out his title. The trouble has arisen from the city's want of sufficient enquiries, and from the claimant's land having always been one vast lot; all that has happened to make it three is that the surveyors for the cadastre made three of it, but preserving in the *Livre de renvoi* the name of Loignon as the owner of all three. The city might have seen that all the time. Lawrence Barnes never was owner of it. The petitioner Loignon seems an exact enough man. What do half the people in Montreal know about all the lines that cadastral and other operators have drawn across their properties, on certain plans? Loignon has always been charged by the Corporation for what he supposed was his land there, now called by three numbers. He was never told that he was not paying enough, and what he did pay might fairly enough be taken by him to be the assessments on the whole land, for the amount has swelled to be larger, per annum, than it was before the cadastral plan was made.

The city pleads that all its proceedings have been formal, and that Loignon's allegations are untrue.

I find that Loignon's case is good, and I must grant his petition. The very first proceeding of the city is a nullity. The Art. 900 of the Code de Procedure does not allow to a Judge in the long vacation or in Chambers to entertain that first proceeding (*requête*). If a Judge in Chambers can grant such a *requête* there is no other proceeding or order, specially appointed for the "Superior Court" to take or make, that he may not as well take or make. The *décret* is a nullity, the very first proceeding being irregular, and apart from this, Loignon having proved enough.

Pagnuelo & Co., for petitioner.

Roy, Q. C., for the City.

SUPERIOR COURT.

MONTREAL, Nov. 30, 1881.

Before JOHNSON, J.

ALLAN v. MULLIN.

Damages—Farrier—Safe condition of premises—Contributory negligence.

A person carrying on a trade on his premises is bound to have the premises in a safe condition for persons and property coming there by implied invitation to give him their custom.

But although there may have been fault amounting to ordinary negligence on the part of such tradesman, he may relieve himself from damages caused by an accident, by showing that there was contributory fault on the other side, without which the accident would not have occurred; and therefore where a valuable horse received an injury while being shod by a farrier, and it appeared that the accident was caused by the groom who accompanied the animal, striking him with a whip, the farrier was relieved from liability, notwithstanding the unsafe condition of the floor of his smithy, but for which no damage to the horse would have resulted.

JOHNSON, J. The present action is to recover the value of a horse owned by the plaintiff, and which was so badly injured while being shod in the premises of the defendant, who is a farrier, and, as is further alleged, by his fault and negligence in respect of the bad condition of the floor of the smithy, that it had to be destroyed.

The answer made to the action by the defendant is that the horse was all the time in the exclusive charge of the plaintiff's groom, who needlessly struck it with a whip, and so caused the accident. That the floor was in good condition, and there was no fault on the defendant's part. That after the accident the plaintiff ought to have given over the horse to the defendant, instead of which he kept it, and destroyed it unnecessarily and on his own respon-