

Now in this case it is plain that upon the production of the mortgage signed by the defendant and the time for payment thereunder having passed, the defendant is *prima facie* liable to the owner of the mortgage, and it would not be necessary for the plaintiff to give other or extrinsic evidence beyond the production of the mortgage and the proof of the defendant's signature in order that the amount of such liability might be said to be "ascertained."

The question in this case is, does the fact that in order to establish the plaintiff's right to sue in his own name on the covenant he must establish by evidence other than documentary that the assignment was only by way of collateral security oust the jurisdiction of the Division Court? I am of opinion that it does not.

It seems to me that in making the provision as to proof, it is the ascertainment of the defendant's liability under a document and the amount of such liability that the legislature had in view, and not the matter of plaintiff's interest in or right to the document by which the same are ascertained.

In every action upon a document if the plaintiff does not appear on the face of it as the person entitled he must establish his title by other evidence which may not always be documentary. The holder of a note in an action against the payee as endorser would have to prove by oral evidence the facts of presentment and dishonour in the absence of a notarial certificate of those facts. A surviving member of a partnership suing in his own name upon a note or other written agreement for payment of money would have to prove the death of the other members of the firm to shew his title by operation of law.

Besides these instances and cases like the one now being considered, it may often happen that a plaintiff cannot establish his title to the document sued on by documentary evidence only. To hold that he cannot for that reason avail himself of the increased jurisdiction of the Division Court notwithstanding that he is able to ascertain and establish the defendant's liability, and the amount thereof under the document by its production and proof of his signature would be to make the statute a dead letter in many cases.

Once the production of the document and proof of its execution establish the liability of the defendant to the owner thereof and ascertain the amount of such liability without the necessity of other and extrinsic evidence to