ment for want of appearance to a specially endorsed writ, where such a note is the claim sued for. It has been the custom to compute the interest at the rate specified in the note. This is clearly opposed to *Dalby* v. *Humphrey*—and what principle is left for the Clerk to act upon except to compute at the legal rate —viz., six per cent. ?

Of course, if it must be left to a Judge or Jury to decide in each case, the claim would be (in part at least) an unliquidated one, and no judgment by default could be signed upon it.

Yours, &c.,

County Judge.

[We are inclined to quote the proverb, "Hard cases make bad law." *Cook* v. *Fowler* must, we suppose, be accepted as final. *Dalby* v. *Humphrey* follows it without even referring to the cases in our Court of Common Pleas, which, we must confess, seem to us more in accordance with sound principles. In both cases there was an evident desire to help the defendants out of what the Courts thought were unconscionable bargains. They, therefore, made new bargains not contemplated by either party. The argument in *Cook* v. *Fowler* was that while it might be reasonable under some circumstances, and the debtor might be very willing to pay five per cent. per month for a short time, it would not follow that he would be willing to pay at the same rate if he should not be able to pay until some time after he had promised. Very probably not, but we venture to assert that there never was a case, apart from the usury laws, where the debtor promised to pay the high rate of interest but what both he and the creditor entered into the arrangement under the full belief that the same rate would be recoverable until payment should be made;—in fact, they would very reasonably suppose that there was a contract to pay the rate mentioned in the note until it should in some way be settled. Doubtless the money would not have been lent, or the note would not have been taken, if the promisee had thought otherwise. One inconvenience of the rule as it now stands appears in the case suggested by our correspondent. We are not prepared at present to express any opinion as to what course Clerks should adopt under the circumstances referred to. Much might depend upon the way of stating the claim for interest on the special endorsement.—Eds. L. J.]

FLOTSAM AND JETSAM.

The practice of our judges in putting on a black cap when they condemn a criminal to death will be found, on consideration, to have a deep and sad significance. Covering the head was, in ancient days, a sign of mourning. "Haman hasted to his house, mourning, having his head covered." (Esth. vi., 12). In like manner, Demosthenes, when insulted by the populace, went home with his head covered. "And David . . wept as he went up, and had his head covered: . . . and all the people that was with him, covered every man his head, and they went up, weeping as they went up" (2 Sam. xv. 30). Darius, too, covered his on learning the death of his Queen.

But, among ourselves, we find traces of similar mode of expressing grief, at funerals. The mourners had a hood "drawn over the head" (Fostbroke, Encyc. of Antiq., p. 951). Indeed the hood drawn forward thus over the head is still part of the mourning habiliment of females, when they follow the corpse. And with this it should be borne in mind that, as far back as the time of Chaucer, the usual colour of mourning was black. Atropos, also, who held the fatal scissors which cut short the life of man, was clothed in black.

When, therefore, the Judge puts on the black cap, it is a very significant as well as solemn procedure. He puts on mourning, for he is to pronounce the forfeit of a life, And, accordingly, the act itself, the putting on of the black cap, is generally understood to be significant. It intimates that the Judge is about to pronounce no merely registered suppositious sentence; in the very formula of condemnation he has put himself in mourning for the convicted cul-