

defendant or of the person whom, as executor or administrator, the defendant represents within the meaning of clause (d) of sub-section 1 of section 72, when in order to establish the claim of the plaintiff or the amount which he is entitled to recover it is necessary for him to give other and extrinsic evidence beyond the mere production of a document and the proof of the signature to it."

The effect of this section is, apparently to declare the law to be as laid down in *Kreutziger v. Brox*, but it clearly, I think, was not intended to narrow the jurisdiction already conferred.

In section 62 of the Revised Division Courts Act, *supra*, the language of the amendment of 1904 is altered by omitting the words "in order to establish the claim of the plaintiff or the amount which he is entitled to recover" and it now reads:

"An amount shall not be deemed to be so ascertained where it is necessary for the plaintiff to give other and extrinsic evidence beyond the production of a document and proof of the signature to it."

The presence in the statute of 1904 of the words omitted in 1910 led to the suggestion in the argument of *Slater v. Laboree* (1905), 9 O. L. R. 545, that the presence of those words was intended to limit the jurisdiction of the Division Court in a case of that kind; but in that case, which was an action upon a promissory note, it was held that where the production of the note and the protest and the proof of the signature would *prima facie* entitle the plaintiff to recover, the case is brought within the jurisdiction of the Division Court, and at p. 547, the judgment proceeds:

"It is not for us to determine whether upon proof of the endorsement without more the plaintiff would be entitled to recover. If the plaintiff is not entitled to recover without more, then if it should become necessary for the learned Judge to enter upon further enquiry and to take evidence for the purpose of shewing some ground for making the defendant liable, then in all probability his jurisdiction would be ousted and he would be bound to stop the further trial of the action; but upon the first question whether upon the face of the instrument the defendant is liable, that is for the Division Court, and not for us," and further on: "The order must be framed so as to make it clear that we are not directing a trial if extrinsic evidence is necessary in order to make the defendant liable."