as a going concern, the defendant entered into possession, made sales and received moneys, entering the receipts in a cash book. The negotiations fell through, and the plaintiff brought this action in the County Court to recover $271.03, the return of moneys received by the defendant belonging to the plaintiff, being proceeds from sales of goods in plaintiff's shop, as follows: setting forth the sums received on each day by the defendant.

Held, that this sum was not ascertained by its receipt by the defendant and the bringing of the action by the plaintiff for the sum so received. The increased jurisdiction applies only in the comparatively plain and simple cases where by the act of the parties or the signature of the defendant the amount is liquidated or ascertained *as being due* from one party to the other on account of some debt, covenant or contract between them, such ascertainment of the amount by the act of the parties being something equivalent to the stating of an account between them.

Judgment of the County Court of Middlesex affirmed.

Magee for the appellant.

R. M. Meredith for the respondent.

IN THE MATTER OF THE LONDON SPEAKER PRINTING CO. PEARCE'S CASE.

IN THE MATTER OF THE SPEIGHT MANUFACTURING CO. BOULTBEE'S CASE.

Company—Subscription before incorporation—Allotment—Ontario Joint Stock Companies' Letters Patent Act—R.S.O. c. 157, s. 2, s-s. 6—Contributory—Ontario Winding-Up Act—R.S.O., c. 183.

P. signed an instrument purporting to be a subscription for shares in a company "proposed to be incorporated" under the Ontario Joint Stock Companies' Letters Patent Act.

B. signed an instrument purporting to be an agreement to accept shares in a company not at the time incorporated.

P. and B. were not corporators named in the Letters Patent and no shares were in fact ever allotted to them, but they were entered in the books as shareholders, and notices of meetings and demand for payment of calls were sent to them, and in winding up proceedings they were placed on the list of contributories.

Held, that there being no company in existence when the instruments in question were signed, they did not constitute binding contracts to take shares so as, without more, to make P. and D. liable as contributories.

In re The Queen City Refining Co., 10 O.R., 264, explained.

Orders of the County Court of Middlesex and of the County Court of York reversed.

A. C. Jeffery for the appellant P.

H. J. Scott, Q.C., for the appellant B.

MacMillan and *Gregory* for the respective respondents.

LINFOOT *v.* LINFOOT.

Infant—Guardian—R.S.O., c. 137, s. 10.

This was an appeal from the Surrogate Court of Peel.

A contest arose as to the guardianship of two children of William France Linfoot, deceased, between the stepmother of the children and their uncle, and the learned Judge of the Surrogate Court appointed the uncle guardian, holding that he was bound so to do under the authority of *In re Irwin*, 16 Gr., 461, although he was personally of opinion that it would be better for the children that the stepmother should be their guardian.

The stepmother appealed, and the appeal came on to be heard before this court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.), on the 18th of October, 1889.

The Court allowed the appeal, holding that the Judge had the right to exercise a discretion in appointing a guardian, and should take into consideration what was most likely to promote the real benefit of the infants, and was not bound to appoint the uncle in preference to the stepmother. The matter was referred back to the learned Judge, the costs of the appeal to be disposed of by him.

T. J. Blain for the appellant.

E. G. Graham for the respondent.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

GALT, C.J.] [October 18.

IN RE COOKE AND VILLAGE OF NORWICH.

Municipal corporations—By-law for contracting debt—Bonus to manufactory—Debentures not