

the capital stock of the Williamson-Marks Mines Limited, which were held by the defendant as collateral security in respect of a loan of \$1,000 made by the defendant upon the plaintiff's promissory note for \$1,000, dated 10th April, and payable 3 months after date, with interest at the rate of 7% per annum from its date to the date of its maturity. The following are the particulars":—

The endorsement then specifies the amount due on the \$1,000 note with interest, the amount received by the defendant in respect of the shares, and strikes a balance and claims that balance with interest from the date of the receipt.

HOLMESTED, K.C.:—It is said that this claim is not a liquidated demand, and *McIntyre v. Munn*, 6 O. L. R. 290, is cited in support of that contention. That case, however, appears to me to be clearly distinguishable from the present. There the plaintiff was suing for breach of an agreement by defendant to manufacture timber in respect of which he had made certain advances on account. The defendant having failed to complete the contract, the plaintiff claimed to recover the difference between the value of the timber delivered and the advances made, alleging that the defendant was overpaid. It is obvious that the value of the timber delivered was not an ascertained sum which a jury would have been bound to give a verdict for, but was an unascertained sum to be arrived at upon the evidence, and would depend on the view that the jury might take of the evidence. In this case the claim is entirely different. The plaintiff alleges that the defendant has received \$3,400 to which he is entitled. If the fact be as the plaintiff alleges, then a jury or the Court must give a verdict for that specific sum, and they could not properly give any more or any less; that it appears to me is what is meant by a "liquidated demand." Then the plaintiff gives credit for a specified sum, of which he gives the particulars and arrives at the balances due, which sum is a fixed and ascertained sum. The interest on this balance is not, according to the authorities, a liquidated demand, because apparently it is not claimed to be payable by virtue of any contract, express or implied, but, as I gather from the endorsement by way of damages for detention of the money after it became due and which a jury might or might not give. This prior to the amendment of the Rules would have rendered the special endorsement bad as a special en-