and some not, the Clerk should stay proceeding till he hears from the Judge, or if the matter be doubtful, it is the safer course for a Clerk to pursue.

In the case put, the order for immediate execution could only be superseded by the party's complying strictly with the requirements of the Rule.

SUITORS.

Evidence confined to the particulars.—As promised in the last number, we proceed to notice a few points respecting evidence. The parties should bear in remembrance that the evidence submitted must be confined to the particulars stated, in the plaintiff's case, in his claim, in the defendant's case, in his set-off, or other statutable defence whereof notice is required. Not that particulars need be strictly accurate in every point so as to tie down the parties to the very letter thereof for any slight error not calculated to mislead, is immaterial. The use of particulars is to apprise a defendant or plaintiff of what his adversary alleges against him; and if the particulars give sufficient information to the opposite party to guard him against surprise, it answers the purpose for which it was intended, and will be sufficient, though it may be in some respects inaccurate. If any objection should be made to the particulars, the Judge should be asked to amend it.

Admissions.—A very common mode of proving a demand is by giving admissions in evidence, for it is reasonably presumed that a party will not against his own interest admit anything as true which is in reality false; but confidential overtures to settle a case, "to buy peace" or admissions made "without prejudice," as it is termed, are not usually received to operate against the party making them. The old maxim, "silence gives consent," may be said to apply in this way to admissions by uncontradicted statements. Thus statements in the presence and hearing of the party against whom they are offered are evidence, if from his silence or conduct it may be presumed, he does not deny their correctness. A store bill, for example, is rendered to a defendant, who reads over the items, or they are read over to him, and he makes no objection—this goes a long way towards showing that there, in fact, lies no objection to the bill.

The evidence of admissions are rather *confirmatory* of the existence of facts than proof of a distinct fact; and therefore some evidence of the demand itself ought properly to be given: thus in a store bill the plaintiff should give some evidence of the account generally and then prove the admission, so as to enable the Judge to connect it with the original transaction, and not rest his whole case on the proof of admission, unless very pointed and distinct.

The promise to pay or actual part payment of an account *after bill rendered* is strong evidence of the defendant's assent to the correctness of the whole bill.

Written Evidence.—Where a contract or bargain has been set down in writing by the parties, in the shape of "articles of agreement" for example, the writing must be produced and proved according to the general rule before referred to, that the best evidence must be given that the nature of the case admits, and in general word of mouth evidence of a bargain is not allowed where there is written evidence, if it is in existence. But if the "writing" has been lost or is in the hands of the opposite party, a witness can be called to prove its contents; that is, in the latter case, if the party who has it will not after a notice to produce, bring it into Court at the time of the trial.

If there is an attesting witness to a writing he should in general be produced to prove it; but if there be no witness, any one acquainted with the parties' signature may prove it. A plaintiff or defendant may, under certain circumstances, be admitted by the Judge to prove a demand, but this species of evidence is objectionable, and there should be always some additional evidence to support a party's own statement—for if the opposite party should contradict it on oath, there would then be nothing on which the Judge might act.

Evidence in ordinary actions—Sale of goods, &c. The most common action in the Division Courts is for the sale of goods, and where the goods were supplied to the defendant, the plaintiff will merely have to prove that the goods were *delivered* and their *value*. The *delivery* is usually proved by the Clerk who served the party, or if the plaintiff kept no Clerk and the demand is small by proof that the defendant was in the habit of dealing with the plaintiff, and the production of the plaintiff's books in which the items are regularly charged, same being verified by his oath.

The *value* of goods is commonly fixed at the time of sale, and express proof thereof may be given; but where goods have been sold without any agreement as to price, proof of what was the selling price of such articles at the time will be sufficient, or proof that the defendant on former occasions paid the same price for similar goods, provided the articles are not of fluctuating value.

With regard to fixed price it may be observed that if a man agrees to sell an article (a waggon for example) at a certain price, and puts in materials superior to those agreed for, the purchaser is neither bound to pay a higher price nor return the waggon.

Wherever there is any express promise to pay lawful interest it may be enforced, like any other contract; and interest is commonly allowed on