

edge or concurrence of the plaintiff, does it not seem as if he had brought himself within the purview of the statute? Strictly speaking, the act of the parties would seem to mean the joint act, and therefore intending something to be done by them at the same time; otherwise, the words needed to give jurisdiction would be "the acts of the parties."

It would appear, then, as if we must accept the delivery of the Court of Appeal (for Osler, J.A., spoke the mind of the court) as laying down the law as settled on this point—that the signature of the defendant is the only act of his that will give jurisdiction apart from the joint act of himself and the plaintiff. The logical result of this must be that the admission of liability by the defendant, otherwise than by his signature, must be accepted and assented to by the plaintiff at the same time. True, the admission by one, and the assent by the other, are separate acts, no matter how expressed; but, if synchronous, they must be considered as the one act, "the act" of the parties. And, if the assent to defendant's admission be postponed to some future time by the plaintiff, it would appear as if there was then no joint act of both parties, so as to give the necessary jurisdiction. This may seem to be refining, but is there any escape from it?

Taking, however, the language of the court in this case, when speaking generally and apart from the particular facts involved in it, we are inclined to think that all that is intended to be laid down is: (1) That there must be a settled sum agreed to by both parties, as though "an account stated." (2) That this sum must be ascertained *before* action brought—that is, that the bringing of the action by plaintiff is not to be considered as his part of the necessary "act." (3) That at the time of the settlement or agreement arrived at there must remain nothing more to be done; that is, that it shall not be necessary for something else to happen in order to make it possible for the plaintiff to sue; that there must be at the time something *actually due* from one party to the other.

If this is what is intended by the judgment, it seems to be somewhat in conflict with *Watson v. Severn*, 6 A.R. 559, where Spragge, C.J., appears to think that "where the acts of the parties enable the court at once, as a mere matter of computation, to ascertain what sum one party has agreed to pay to the other," the lower court would have jurisdiction, "although