Plaintiff's claim, after abandoning the excess of $5 05, would be.....		$100 00
Defendant's set-off would be	$190 00	
Less excess remitted as above	99 00	
		91 00
Whereby there would be due to the plaintiff		$9 00

Which would be unjust, inasmuch as that according to equity and good conscience the defendant is entitled to a judgment for $84 97 upon the first shewing. I observed some time ago a communication in your 9th Vol., p. 290, with your own remarks upon the subject. Would it not be profitable for your subscribers to discuss the matter in the *Local Courts' Gazette*, for the enlightenment of those interested in and doing business in the Division Courts? And the subscribers to the *Gazette* would doubtless be glad to have your opinion upon the case submitted. It is to be feared that if the Judges of the Division Courts deal with accounts and enquire into claims exceeding $100 in amount, they will subject themselves to proceedings in prohibition, the 59th section of the Con. Stat. for U. C. sec. 19, p. 145, providing that no greater sum than $100 shall be recovered in any action for the balance of an unsettled account, nor shall any action for any such balance be sustained where the unsettled account in the whole exceeds $200. The Court has direct jurisdiction where the amount or balance claimed does not exceed $100. (See sub-sec. 2 of sec. 55.) Then by sec. 95, "If the defendant's demand, as proved, exceeds the plaintiff's, the Court may nonsuit the plaintiff; or if the defendant's set-off (after remitting any portion of it he pleases,) does not exceed $100, the Court may give judgment for the defendant for the balance found in his favor." I may mention that the County Judge, in the case alluded to, rendered his judgment for the defendant generally, 1st, because the defendant had only set up a claim for $100 against any demand which the plaintiff might prove against him, and had remitted that portion of his claim which exceeded $100, and because the plaintiff proved a demand against the defendant of $100, after abandoning $5 03, and the defendant could only recover $100; after remitting $99 of his demand the two demands respectively balanced each other; and 2nd, because the Judge considered that if he were to render a judgment for the defendant for $84 97, justly due the defendant in equity and good conscience, he would be reclaiming for or allowing the defendant what the defendant himself had voluntarily remitted, (neither party would, in fact, have remitted or abandoned any part of their respective claims,) and that he (the Judge) would thus be stretching his jurisdiction for the sake of equity and good conscience, contrary to law.

Yours, LEX.

St. Thomas, C.W., 26th Feb., 1867.

[We think the judge was right in all particulars, and could not well have acted otherwise on the papers before him. The defendant ought not to have abandoned the excess, but put in his whole claim for $233. Then, on proving an amount exceeding the plaintiff's demand, the judge would have nonsuited the plaintiff with costs, and the defendant would have retained his remedy for the balance due him; and in action against this plaintiff in the County Court, if he recovered the true balance due him, $84 97, he would be entitled to a certificate for full costs. As the case now stands, it is not very clear what remedy he has for that balance.]—EDS. L.C.G.

Division Courts—Adjournment of case—Subsequent defence of Statute of Limitations.

TO THE EDITORS OF THE LOCAL COURTS GAZETTE.

GENTLEMEN,—Will you be kind enough to reply to the following question through the columns of the *Gazette*?

If A. sue B. for an account, and on the day of trial A. has the case adjourned, not being prepared, for want of a witness to prove his case, can B., after the adjournment, plead the Statute of Liminations (which he had not done before)?

I had a case similar to the above at the last sitting of our Division Court held in this town, and had it adjourned for want of evidence. The greater part of the debt was incurred seven or eight years ago. Now the defendant says he can plead the Statute of Limitations. My opinion is he cannot. If he wished to have done so, he should have so pleaded six days before the last Court day, the day of trial for the case, and when if I had been prepared with my witnesses the case would have been decided against him. Our next Court