were overdue when the arrangement spoken of was made, and no time having been agreed upon at which they were to be paid, the intention, I presume, was that they should be paid forthwith: Churchill v. Hunt, 3 Denio (N. Y.) 321.

The plaintiff having, as I find, undertaken to pay the notes in acquittance and discharge of the defendant in consideration of receiving the defendant's demand note for a fixed sum, if he did not perform his engagement in that behalf, was liable to be sued thereon by the defendant, who, in that event, would be enabled to recover from the plaintiff the amount due upon the notes with all overdue interest, that being the amount which the plaintiff engaged to pay in exoneration and discharge of the defendant.

The rule of law is too clear to be disputed. It was acted on in this Court in Barrowman v. Fader, 31 N. S. Rep. 20, where many of the cases are cited.

In Ashdown v. Ingamells, 5 Ex. Div. 286, where the same principle was applied, Bramwell, L.J., said: "If the liquidating debtors had not become insolvent they clearly would have been entitled to recover by way of damages the sum which the defendant ought to have paid, but did not pay."

The action there was not for the balance due upon the price of the things sold, but for not paying to third parties a sum which the defendant undertook to pay in discharge of the vendor's liability to them.

The case of Wicker v. Hoppock, 6 Wallace (U. S.) 94, deals with the same principle and holds that "On a breach of contract to pay, as distinguished from a contract to indemnify, the amount which would have been recovered if the contract had been kept is the measure of damages if the contract is broken." See also Spark v. Heslop, 1 E. & E. 563, and Hodgson v. Wood, 2 H. & C. 649.

Most of the cases, it is true, were founded upon a bond or covenant to pay, under seal, and which imported a consideration, but a seal was not necessary to make the contract valid, and its presence did not affect the measure of damages.

The defendant's promise to recoup the plaintiff's outlay, if expressed in a letter or undertaking, would be good, and it cannot be any less effective because it assumes the shape of a note on demand.

Sparks v. Heslop, and Ashdown v. Ingamells, cited above, were not cases of bond or covenant. The former was