

DIVISION COURT JURISDICTION.

may be recovered as damages on the dishonor of a bill or non-payment of a promissory note. It has been usual to allow these in the Courts of Record, in computing principal and interest on a promissory note or bill of exchange or instrument set forth in the pleadings or special endorsement of the summons. Formerly they were only allowed where they had been specially laid in the form of a claim for damages; but it will be admitted that this stands upon its own peculiar ground, as accretions, or as accessory to the principal cause of action; they are, in fact, no part of the debt, because, if the debt or principal sum were paid after it became due, and the payee of a note or obligee of a bond were to receive the principal debt after it had become payable, he could not maintain an action afterwards *on the instrument* for the interest or charges; for, in such a case, the defendant might plead *solvit post diem*, and the plaintiff would be barred from recovering the interest, he having received the principal; it would not, as we have said, form part of the debt, but merely entitle the plaintiff to a special claim for damages (see *Dixon v. Parker* 1 Esp. 110, *Kendrick v. Lomax* 2 Cr. & J. 405, and *Rogers v. Hunt* 10 Ex. 474). In the case last named the summons was specially endorsed for £31 8s. 9d., claimed as due for balance of principal, interest, expenses of noting and commission due on a bill of exchange for £75 9s. accepted by defendant. Judgment by default was signed as for want of appearance. In an application to set aside the judgment as irregular, because the special endorsement was not such as was contemplated by Imp. Stat. 15 & 16 Vict. c. 76, which authorized the signing of judgment *for a debt or liquidated demand in money*, the plaintiff having no right to claim the expenses of noting; it was held by Parke B., that it ought to have appeared on the face of the endorsement itself, that the claim was for a *liquidated demand*, and that the plaintiff had no right to add the claim for the expenses of noting.

In our Superior Courts of common law the meaning of the words, "ascertained by the signature of the defendant" has been considered and to a great extent settled. The two leading cases seem to be *Wallbridge v. Brown* in the Court of Queen's Bench, and *Cushman v. Reid* in the Court of Common Pleas. The first of these seems to have reached the utmost verge of what might be considered as ascertaining an amount by the act of the parties or by signature of the defendant—that is to say, if the defendant's act or signature is to be the attestation of the sum to be paid as a debt due to the plaintiff, for we do not see how a sum can be said to be ascertained which has not been reduced to a fixed certainty between the parties. The case is found reported in 18 U. C. R. 160, and was brought in question on an application for a prohibition as not being within the provision and meaning of 19 Vict. ch. 90., sec. 20, which gave the County Courts jurisdiction in all cases and suits relating to debt, covenant and contract to \$400, where the amount was liquidated or ascertained by the act of the parties or by the signature of the defendant. The defendant had by writing bound himself to pay for a lathe, pulleys, etc., the "invoice price and the charges of freight, duties, etc.," and to give his note for the articles as well as others he might purchase from the plaintiff at six months from date, payable at a bank with interest. At the trial it was found necessary for the plaintiff to prove the amount of his claim, and he called a witness to shew the invoice price of the lathe and the amount of charges and duties paid, from which it was contended that if this proof were required the case was beyond the jurisdiction of the court, the amount not having been "ascertained by the act of the parties, or signature of the defendant." The court, however, held otherwise, and discharged the application. Were it not for this decision one would have supposed that what the jury were obliged to ascertain by the evidence of a witness, the statute intended that the parties