$953.46 or thereabouts for breaches of the agreement of sale.

Plaintiff shortly afterwards sued the guarantors, who have paid into Court $1,195.01, as being all that is justly due. In their statement of defence they allege that plaintiff agreed when the note was given that the exact amount should be adjusted during the currency of the note.

No doubt what is the correct application of Rule 206 (sub-sec. 2) is not always obvious. This question was lately considered in Imperial Paper Mills v. McDonald, 7 O. W. R. 472, where the ruling cases are cited. The reasons of the Chancellor in that case would seem to justify the present motion, . . . for which reliance was placed on Montgomery v. Foy, [1895] 2 Q. B. 321, and it was argued that here the real question in controversy is whether any greater sum than the $1,195.01 paid into Court is due to plaintiff, and if that is so, then the presence of the company is necessary so that the whole matter arising out of the contract may be disposed of in one action, which is one of the cardinal principles of the Judicature Act. Otherwise the defendants in this action would be obliged to get the company to bring a new action against plaintiff for damages. It was said by Lord Esher in Montgomery v. Foy, supra, at p. 325, that Norris v. Beazley, 2 C. P. D. 80, which was relied on in opposition to the motion, was open to observation, being decided at an early stage of the decisions on the Judicature Act. In the same case A. L. Smith, L.J., at p. 328, pointed out that if such an action for damages was brought, while the first action was pending, the Court would order them to be tried at the same time, so that only the true balance should be paid to plaintiff.

It will be seen that in Norris v. Beazley, the action was against the person primarily liable. Even there the decision seems to have proceeded on the ground that plaintiff had no possible claim against the Niger Company in respect of the acceptance, as the company was not in existence when it was given. And Denman, J., put his decision on the ground that the company was not a "necessary party" within the meaning of the Rule. Grove, J., also relies on the fact that the contract there was only between plaintiff and defendant and that the Merchants Company had nothing to do with the acceptance sued on.