

Co. Ct.]

BURNS V. ROGERS, ET AL.

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REPORTS.

ONTARIO.

COUNTY COURT OF LEEDS AND GREN-
VILLE.

BURNS V. ROGERS, ET AL.

*Division Courts — Jurisdiction — Promissory
note—Notarials.*

Held, That an action to recover a balance of over \$100, and less than \$200, upon a promissory note which had been protested might have been brought in a Division Court, even though the notarial fees formed a part of the amount claimed by plaintiff.

(Brockville, April 14.

This action was brought to recover an amount of over \$200 alleged to be due to plaintiff. At the trial at the last October sittings, without a jury, a verdict was rendered in favor of the plaintiff for \$154. No certificate of costs was asked for.

Upon taxation of costs, the defendants contended that plaintiff was only entitled to Division Court costs, and that they had a right to set off County Court costs. The clerk declined to allow plaintiff County Court costs without the Judge's permission. The parties subsequently (14th April, 1881), appeared before the Judge.

J. C. Ross for plaintiff, claimed that the fact of notarials having been included in the claim, and of the amount thereof not having been ascertained by the signature of defendants, ousted the Division Court of jurisdiction. He cited *Eaton v. Rosenthal*, in County Court of York (Nov. 25, 1880, not reported), *Elliott v. Gray*, cited in O'Brien's D. C. Manual, 1880, p. 14, *Kerack v. Scott*, County Court of Hastings, not reported, and CANADA LAW JOURNAL, ante, p. 136.

Webster for defendants, cited Con. Stat. U.C. cap. 42, secs. 13 and 14 (latter sec. carried into R. S. O., cap. 50, sec. 144); R. S. O., cap. 50, secs. 347 and 348; *Vogt v. Boyle*, 8 Prac. R. 249, and Division Court Act, 1880, sec. 2, and note thereto in Sinclair's D. C. Acts.

McDONALD, Co. J.—The second section of the Division Courts' Act, 1880, extends the jurisdiction of those courts to "all claims for the recovery of a debt or money demand, the amount or balance of which does not exceed two hundred dollars and the amount or original

amount of the claim is ascertained by the signature of the defendant or the person whom, as executor or administrator, the defendant represents." The balance found due to the plaintiff upon the note sued on in this cause was between \$100 and \$200, and could clearly have been recovered by suit in the proper Division Court at Gananoque. But the plaintiff insists that the amount found due included \$1.44 for notarials and postages, and that such latter sum, not having been "ascertained by the signature of the defendant," the Division Court is ousted of jurisdiction. As a matter of fact I am, at this late date, unable to say whether the amount found due did include notaria's and postages, but, assuming that it did, I still find against plaintiff's contention.

Section 13 of cap. 42 of Con. Stat. U. C. which, apparently, as being a matter for Dominion legislation, has been left untouched in the revision of the Statutes of Ontario, (see vol. 2, page 2374), enacts that "All bills, drafts, or orders drawn by persons in Upper Canada on persons in this Province, and all promissory notes made or negotiated in Upper Canada, if protested for non-payment, shall be subject to interest from the date of the protest, or if interest be therein expressed as payable from a particular period, then from such period to the time of payment; and in case of protest the expense of noting and protesting and the postages thereby incurred shall be allowed and paid to the holder over and above the said interest."

It is true that to enable the plaintiff to recover the amount of notarials proof must be given, either by the production of the protest or otherwise. But I do not think this alters the aspect of the case. The amount of such notarials is given to him by the statute, and I look upon it as a sort of accretion to his claim which is not to be considered in deciding as to whether an action could have been brought in the Division Court, unless indeed the amount of such notarials carries the whole amount of the claim beyond two hundred dollars.

It is with some doubt that I have arrived at this decision, and the more so as it differs from judgments which I understand have been already given by the learned Judge of the County Court of York, and the learned Judge of the County Court of Hastings. Possibly a