

obtain such security for the payment of any implements sold by him as such agent as would be satisfactory to the plaintiffs, etc.,—that the plaintiffs shipped him a large quantity of implements accordingly—that a statement was made of accounts on November 9th, 1911, shewing the defendant owed the plaintiffs \$504.29—that at the defendant's instance, as he could not pay at once, the plaintiffs' traveller took promissory notes for \$480.29 as follows:—

Due January 1st, 1912 \$ 80 29

Due June 1st, 1912 100 00

Due October 1st, 1912 300 00 \$480 29

to submit to the plaintiffs—that the plaintiffs refused to accept them and returned them to the defendant forthwith—that nothing has been paid—that the defendant sometimes asserts that the plaintiffs took the notes in settlement, but this the plaintiffs deny—a statement of the items amounting to the \$504.29 is annexed to the statement of claim and the plaintiffs claim “to recover from the defendant the said sum of \$504.29 and interest from the 9th November, 1911, or in the alternative to recover from the defendant the sum of \$180.29, the amount of two of the three promissory notes and interest thereon.” It does not exactly appear whether the plaintiffs are claiming as on an account stated or on the open account—from the items being attached to the record, I presume the latter.

The statement of defence sets up that it was the recognised custom to accept the personal notes of the defendant for any balance due: that the plaintiffs' agent Appleby “settled the balance at \$480.24 and insisted and demanded that the defendant should furnish his promissory notes . . . ” as mentioned, which he did: that he on June 13th, 1912, paid the plaintiffs the sum of \$184.39, being the amount of the first two promissory notes with interest, but the plaintiffs refused to accept it and repudiated the settlement and he brought into Court that sum and said it was sufficient to satisfy the plaintiffs' claim.

The plaintiffs thereupon served a notice in the following terms. “Take notice that the plaintiffs accept the sum of \$184.39 paid by you into Court in satisfaction of its alternative claim herein”—and taking the money out of Court proceeded to tax costs. These were allowed by the clerk on the County Court scale and on appeal to the County Judge the clerk's ruling was upheld.