

DIVISION COURT JURISDICTION.

\$200, and the amount, or original amount, of the claim is ascertained by the signature of the defendant," &c. The construction to be placed upon these words comes up in a variety of ways. One is as to the taxation of costs.

Some clerks of County Courts tax plaintiffs full costs in cases where the debt claimed exceeds \$100 and does not exceed \$200 on bills of exchange and promissory notes where the amount is not *all* ascertained by the signature of defendant. Others refuse to do so if there is only a claim for interest, postage, cost of protest, &c.

The decision given last year (*Elliott v. Gray*) by the learned Senior Judge of York, under this sub-section (the case is referred to at length in O'Brien's D. C. Manual, page 14,) has been acted on by both judges and clerks in several of the outer counties, whilst there is a conflict of decision in others, so that before a suit is brought in any county involving questions under it, it seems to be necessary to inquire how the sub-section is there interpreted.

Under the decisions hereinafter referred to we think there is sufficient analogy between previously existing statutes, and the present section to make the line of duty to the taxing officer or to the judge in granting an order for costs, tolerably certain. The words, "a debt or money demand, the amount or balance of which does not exceed \$200 and the amount or original claim as ascertained by the signature of the defendant," &c., appear, in the light of decided cases, to be so obvious in their import, that there is room for little doubt on the subject. We are not aware that up to the present time any adverse or authoritative decision by either of the Superior Courts, has been given on the question which was involved in *Elliott v. Gray*, or on other points arising under the sub-section named. Claims are frequently forwarded to or placed in the hands of Clerks of Division Courts for suit, which do not seem to come within the extended juris-

diction of those Courts, and on the authority of many decided cases in England and this Province are not subjects for their cognizance. We are aware that claims on open accounts have been put in suit in which for want of the disputing note by the defendant, Division Court Clerks have taken upon themselves to sign judgment although they have been for sums exceeding \$100, and \$200; although there have been no signatures of the defendants shewing that the amounts were ascertained and sanctioned by them. These are so plainly and obviously illegal that it were idle to speak of them, as they have grown out of the mixed ignorance and rapacity of those (few in number we are happy to think) who would do anything to get fees and make costs for themselves.

There is, however, another class of cases wherein as to part of the plaintiff's claim, the sum has been ascertained by the signature of the defendant to an amount exceeding \$100, and not exceeding \$200, and charges have been added—for postage, expenses of protest, for noting—and we have even seen in one case a claim for "Attorneys Charges." It is questionable with us under the decision we have read, whether any of these charges can be legally claimed as accretions or as accessory to the principal debt demanded;—it is even doubtful whether interest can be added to the debt "ascertained by the signature of the defendant" where the payment of interest is not part of the contract itself. Of the right to add Attorney's charges we make no doubt whatever; there is no sanction for any such under this head. Some even doubt whether a note for a sum over \$100 payable with interest can be recovered in the Division Court if interest is demanded. We propose, therefore, to lay before our readers an epitome of some of the decided cases bearing on the question, which we think may be useful to our readers at the present time.

Postages and expenses of noting and notarial charges form no part of the debt, but