

1824

Highway  
against  
Malcolm.

out in the declaration, was sufficient to entitle the plaintiff to a verdict upon the account stated or other money counts.

That as before the statute of Anne it was competent to a plaintiff to give a note as evidence upon these counts, so it might clearly be done now as that statute did not take away any remedy which a plaintiff had before its enactment, but gave a concurrent one.\*

That the principle reason for inserting the common counts in the declaration, was to enable a plaintiff to give his note as evidence upon those counts in case he should from variance or other cause, fail to recover upon the note count.

That it is laid down by Lord Ellenborough† that in an action by the payee against the maker of a note the note itself is evidence of money lent; and in Bayley, that it is evidence of money paid by an holder to the use of a drawer; and in the same author that it is evidence of money *had and received* by the drawer to the use of the holder, and that an acceptance is

\* *Storv v. Atkin*, Strachan 719.

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