REPORTS.

ONTARIO.

COUNTY COURT OF MIDDLESEX.

STEWART v. FORSYTH.

Division Court Act, 1880, Sec. 2—Jurisdiction. —Money demand—Claim ascertained and signature of defendant.

The defendant bought an article from plaintiff and signed an agreement to that effect, which concluded thus: "which I agree to take @ $100 and settle for as follows: give my note for $20, payable Jan., 1881, (and then describing three other notes amounting in all to $90) and an old machine to be taken at $20.

Held, that the claim was a money demand and that the amount of the claim was ascertained by the signature of the defendant within the meaning of the Div. Court Act, 1880, sec. 2.

[London, Jan., 1881.

This was an application for County Court costs under the following circumstances.

The plaintiff sold a reaping machine to the defendant, and the latter then signed a written order for it, concluding with the following words: "which I agree to take at $110 and settle for as follows:—

Give you my note for $20 payable Jan., 1881.
also " " $20 " " 1882.
also " " $25 " " 1883.
also " " $25 " " 1884.
and an old machine to be taken at $20.

The plaintiff had a verdict which would entitle him to County Court Costs, unless under the Division Court Act of 1880, he could have brought his action in the Division Court.

The declaration set out the sale, the agreement to give the notes, which the defendant refusal to give.

Macbeth asked for the certificate because the claim was not a money demand, and because the damages were not ascertained by the signature of the defendant, and were unliquidated.

Taylor, contra.

ELLIOT, Co. J.—The plaintiff contends that his claim in this declaration is not a debt or a money demand, but is for unliquidated damages and therefore not within the new jurisdiction conferred by the second section of the Division Court Act of 1880. If the plaintiff's claim, as set out in his declaration, is not a debt in the technical sense, I think it is certainly a money demand. The expression appears to me to be a generic term, whereby actions, which are founded in money, are distinguishable from those which sound in damages only. Thus actions for malicious prosecutions, trespass &c., are not founded originally on any money basis —money is not concerned in their inception. But if this is not a money demand what is it? The plaintiff sold a machine for $110 and has not been paid. In whatever form he may put his claim, it is a money demand.

Secondly, as to the contention that the damages are unascertained by the signature of the defendant. If it were clear that the plaintiff could not recover under the count on the special agreement the full price of the machine, but that recourse must be had to some indeterminate mode of computation, there might be more room for the plaintiff's contention. But according to Mayne on Damages the plaintiff could sue on the special agreement as the plaintiff has done, and could recover the whole price for which the notes were to be given: *Hutchinson* v. *Reed*, 3 Camp. 329. If then, the jury could give the full price of the machine under that count, the price is ascertained by the defendant's signature, and the action is clearly within the jurisdiction of the Division Court. *Mussen* v. *Price*, 4 East 147, and other cases to which the plaintiff has referred, turn upon the form of the pleadings, and do not materially bear upon the question before us, which is one of jurisdiction under a new statute.

It is clear that when the defendant refused to give the notes, the plaintiff could bring an action against him in one shape or another immediately. The only question would be in what form should the declaration be framed. Shall it be for goods sold or delivered, or on the special agreement to give the notes and the refusal? Now, if the defendant had sued in the Division Court, a technical question relating to a matter of pleading would have no weight. All that the plaintiff is required to do there is to give a reasonably clear notice of his claim. If he had sued for the price of the machine in that court, and had produced the written agreement signed by the defendant fixing the price at $110, and showed the defendant's refusal to give the notes, the judge or jury could have given $110, or some lower sum, unless the defendant could show good reason to the contrary. In *Rugg* v. *Weir*, 16 C. B. N. S., 477, the plaintiff was allowed to recover on the declaration for goods