

BOYD, C.:—The County Courts Act as to jurisdiction was amended in 1904 by 4 Edw. VII. ch. 10, sec. 10, by inserting the words "as being due" after "acceptance," so that R. S. O. 1897 ch. 55, sec. 23 (2), now reads: "The County Court shall have jurisdiction . . . in all causes and actions relating to debt, covenant, and contract to \$600 where the amount is liquidated or ascertained *as being due* by the act of the parties or by the signature of the defendant." The new words introduced are taken, it may be inferred, from the judgment of Mr. Justice Osler in *Robb v. Murray*, 16 A. R. 506, from the sentence in which he says, speaking of the scope of this section: "The intention was to give the larger jurisdiction only in the comparatively plain and simple cases where by the act of the parties or the signature of the defendant, the amount was liquidated or ascertained *as being due* from one party to the other on account of some debt, covenant, or contract between them."

Mr. Hoyles, in commenting on the year's legislation in 24 C. L. T. p. 256, suggests that the effect of the amendment is to rehabilitate that judgment, which had been considerably overruled by the same Court in *Ostrom v. Benjamin*, 21 A. R. 467.

Upon the pleadings this action is founded upon a contract to build a house at a total cost of \$3,000. The plaintiffs in their claim give credit for payments made by the owner up to \$2,460 and for a set-off, agreed to be allowed on account, of \$240, and, deducting these sums, they sue for a balance of \$300.

The defence set up in effect admits that the amount in dispute is only \$300, but says it is not payable because the plaintiffs did not complete their contract according to plans and specifications.

Upon the trial the learned Judge awarded judgment for \$300 with costs. Upon the taxation the registrar ruled that the case was within the competence of the County Court, and proceeded to tax under Rule 1132. The plaintiffs appeal.

This action is respecting a contract involving payment of \$3,000 for the proper construction and completion of the buildings, and upon the pleadings it was all open for the defendant to range over all the details and to question the insufficiency of what was done. The fact that by payment and set-off the total amount agreed upon had been brought down to \$300 does not suffice, if that amount is not liqui-