

RIDDELL, J.:—The action was to recover arrears of certain fixed annual sums payable by defendants to plaintiff “annually during the time of his actual life.”

The defence set up satisfaction by way of novation and payment. The trial Judge (Anglin) held that the defence of novation had not been made out, and that there was due and payable to plaintiff from defendants, as arrears of the annuity, \$37.50 a year for 7 years, a total of \$262.50. The amount of annual payment was fixed at \$100 in the deed, but defendants contended that of this \$100 plaintiff had agreed to look to another person for \$37.50—defendants admittedly paying the balance, \$62.50 per annum. It appeared that defendants had paid to one Dunnett, a creditor of plaintiff, “whom they had not in any way undertaken to pay as part of the bargain,” the sum of \$69, at the request of plaintiff; and the trial Judge said: “But against that”—i.e., the sum of \$262.50—“must be offset the sum of \$69, which I find was paid by defendants. . . . to one Dunnett. . . . Deducting this sum leaves a balance of \$193.50, for which judgment must be awarded for plaintiff with costs.”

No direction was given as to the scale of costs. The taxing officer at Belleville held that the costs should be taxed on the County Court scale; my brother Teetzel reversed the officer’s ruling and held that the action could have been brought in the Division Court. . . .

The governing statute is the Division Courts Act, R. S. O. 1897 ch. 60, sec. 72 (1) (d), as amended by 4 Edw. VII. ch. 12, sec. 1:—“The Division Courts shall have jurisdiction in the following cases . . . (d) All claims for the recovery of a debt or money demand the amount or balance of which does not exceed \$200, where the amount or the original amount of the claim is ascertained by the signature of the defendant. . . .”

“72 (a). The amount or original amount of the claim shall not be deemed to be ascertained by the signature of the defendant . . . when in order to establish the claim of the plaintiff, or the amount which he is entitled to recover, it is necessary for him to give other and extrinsic evidence beyond the mere production of a document and the proof of the signature to it.”

The objections to the jurisdiction of the Division Courts are two, one based on the original section, viz., that the amount or balance recoverable is more than \$200, and the