

ONTARIO.

SUPREME COURT OF JUDICATURE.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.]

[June 13.

RE BALL AND BELL.

Division Courts—Prohibition—Mortgage—Contract or obligation to indemnify—Action for interest only—Dividing cause of action—R.S.O., c. 51, s. 77.

Where the plaintiff conveyed land to the defendant, subject to a mortgage, and after maturity thereof paid the mortgagee two gales of interest since accrued, which he sought to recover from the defendant by action in a Division Court ;

Held (reversing the judgment of ARMOUR, C.J.), there was no splitting of the cause of action within s. 77 of the Division Courts Act, R.S.O., c. 51, and, therefore, that the action was maintainable.

N. F. Davidson for the applicant.

S. W. McKeown, contra.

Div'l Court.]

[June 13.

KENNEDY *v.* MERRICK.

Mortgage—Covenant of indemnity—Assignment of—Agreement by assignee to release assignor on obtaining judgment—Effect of.

C., as security for \$7,000, mortgaged a number of lots to A., the mortgage containing a provision for the release of part of the mortgaged premises upon payment of a proportionate part of the mortgage money. C. conveyed his equity of redemption to D., who assumed the mortgage, and agreed to indemnify C. against same. D. conveyed his equity of redemption in half of the lots to defendant, subject to half of the mortgage, and subject to a half of another mortgage on the lots, defendant agreeing to assume the half of the said mortgages, and to indemnify D. against same. A. assigned the mortgage to plaintiff, reciting that it had been reduced to \$3,500, and conveyed the land therein contained, save and except the part released. C. assigned to the plaintiff D.'s covenant of indemnity, D. agreeing to release C. from his liability upon obtaining judgment against defendant on his covenant, but such release was not to prejudice any rights plaintiff might have against any parties through whom C. might claim, or who might claim through him. D. also assigned to plaintiff all his rights under the defendant's covenant of indemnity, the plaintiff by deed agreeing to release D. on his obtaining judgment against the defendant.