the ratepayers. The insufficiency of this by-law to meet the requirements of the rule was urged on various grounds; but, apart from every other difficulty, the circumstance that the name of the seller does not appear in the by-law is fatal. That the mention of the seller (or his agent) is essential to make out a contract has been clearly settled. I refer to *Champion* v. *Plummer*, 5 Esp. 240; *Warner* v. *Willington*, 3 Drew. 523; and *Williams* v. *Lake*, 6 Jur. N.S. 45.

Though, therefore, if the plaintiff, had contracted with a private individual, or with an unincorporated company, what occurred would have entitled the plaintiff to the relief which he prays; yet, as the defendants are a corporate body, I am obliged to hold that as against them the contract was not binding; and that the plaintiff's bill must be dismissed. It is not a case for costs: *The Leominster Canal and Navigation Co.* v. *The Shrewsbury and Hertford Railway Co.* 3 K. & J. 674.

DIVISION COURTS.

(In the Fourth Division Court, County of Wentworth, before His Honor Judge LOGIE.)

WAUGH v. CONWAY.

Division Courts—Jurisdiction—Reduction of claim by payment.

An action on an unsettled account exceeding $200, which was reduced by *payment* to $100, *held*, not to be within the Division Court jurisdiction.

Miron v. *McCabe*, 4 Prac. R. 171, considered.

[Hamilton, 7th Sept. 1868.]

In this action the plaintiff claimed $104 17, gave credit for $3 50, and abandoned 67c., reducing the claim to $100.

The claim was for the amount of an account, one item being "balance of account due on building, $55 17;" the other items being for hay, wheat and lumber sold by plaintiff to defendant. There had been no settlement of the building account, and no admitted balance, on the contrary, every item of that account as well as the account in suit was disputed. The building account was produced, and consisted of a number of items for building materials, teaming and labour, exceeding $200, but reduced by payments to the balance claimed of $55 17. It became necessary, therefore, to prove all the items of the building account, as well as of the other; the two accounts amounting to about $300, when

Wardell for the defendant, contended that the court had no jurisdiction to try the case.

Durand for the plaintiff, cited *Miron* v. *McCabe*, 4 Pr. Rep. 171.

LOGIE, Co. J.—The 59th section of the Division Courts Act, contains a proviso, that no action shall be sustained for the balance of an unsettled account, where the unsettled account in the whole exceeds $200 Under that proviso I have always held that I had no jurisdiction to try an unliquidated account exceeding $200, though reduced by payment to a sum below $100; the intention of the Legislature apparently being to prevent these small debt courts from investigating large and important transactions. *Miron* v. *McCabe*, 4 Pr. Rep. 171, however, seems to be an authority for the position urged on behalf of the plaintiff, that this court has jurisdiction to try a disputed claim exceeding $200, where it has been reduced to $100 by payment. The point certainly was raised in that case, but it does not seem expressly decided in the judgment; on the other hand in *Higginbotham* v. *Moore*, 21 U. C. Q. B. 326, the court assume as a matter of course, that in such a case the Division Court has no jurisdiction. It was an action to recover the amount of an account and, as amended, the balance due upon two notes, the amount of the notes being reduced by *payment* to the balance claimed; and there the court held that the notes being settled or liquidated amounts, the proviso in the statute did not apply, the balance due on the notes and the account not exceeding the jurisdiction of the Division Court. Robinson, C. J., in giving judgment says:—"the plaintiff's claim as first delivered in stating an account of which the debit side exceeded £73, stated a case not within the jurisdiction of the court, according to the 59th section, although the balance claimed was only £25—that is if the whole account is to be taken as unsettled, notwithstanding there were among the items two notes, which in themselves were liquidated demands." I have known cases to be brought in the Division Courts for the balance of an unsettled acount exceeding $1000, but reduced by payment to $100; if the Court had jurisdiction in such a case, there would be this anomaly, that a case *could* be tried in a Division Court which would be above the jurisdiction of a higher court, the County Court. The intention of the Legislature to give jurisdiction to the Division Court in such a case as this, must be very clear and decisive of the point, more express than in *Miron* v. *McCabe*, before I would assume the jurisdiction claimed on behalf of the plaintiff.

GILBERT v. GILBERT EXECUTRIX &c. W. GILBERT.

Splitting cause of action.

Claims, such as promissory notes, which would each constitute a distinct cause of action if sued upon directly, become within the rule as to splitting of causes of action in Division Courts, when the nature of the action upon them is changed to an indirect action as for money paid by an endorser to the use of the maker.

[Hamilton, 7th Sept., 1868.]

At the June sittings of the Court, an action was brought to recover the amount of two promissory notes, made by the deceased Wm. Gilbert to other parties; the plaintiff claiming that he had signed the notes as security for Wm. Gilbert, and had to pay them. The claim was allowed to be amended, to one for money paid for the use of the defendant as administratrix, &c A set-off was put in and proved, and the plaintiff had judgment for a small balance. At the trial the plaintiff produced another note made in the same way, which he said he had paid, but did not give it in evidence. At the last sittings of the court, he brought another action for money paid on that note, and objection was made that he could not recover, on the ground that it was a splitting of a cause of action. For the plaintiff it was contended, that the three notes being all payable to different persons, formed different causes of action, and therefore the plaintiff was entitled to recover.

LOGIE, Co. J.—In *Wickham* v. *Lee*, 12 A. & E. N. S 526, Erle, J. says:—"It is not a splitting of actions to bring distinct plaints, where in a Superior Court there would have been two counts. I am not sure that the Court of Exchequer puts it so, but that is the true construction of the Act."