tention that there was a release agreed upon and acted on by both parties—in relinquishing and in acquiring the property —which precluded the legal enforcement of the covenant, because of the countervailing equities based upon this sufficiently proved arrangement. Williams v. Yeomans, L. R. 1 Eq. 184, referred to. Appeal allowed with costs and action dismissed with costs.

JUNE 10TH, 1903.

DIVISIONAL COURT.

HARVEY v. McPHERSON.

Division Courts—Jurisdiction—Splitting Cause of Action — Promissory Notes—Consolidation of Claim in Proof against Insolvent Estate.

Appeal by plaintiff from judgment of 1st Division Court in county of Wentworth (2 O. W. R. 251) dismissing the action because brought for only a part of plaintiff's claim, contrary to sec. 79 of the Division Courts Act.

A. McLean Macdonell, for plaintiff.

C. A. Moss, for defendant.

THE COURT (BOYD, C., FERGUSON, J., MACMAHON, J.) held that the promissory note sued on (dated 15th November, 1896) was when due a single cause of action, and remained so, and might be sued upon as such in a Division Court. What was relied on to shew that it was but a fraction of a cause of action, was, that the debtors, become insolvent, made an assignment for creditors, and that the holders proved their claim upon this and other notes, and in respect of goods and merchandize for which they did not hold notes, before the assignee, for the lump sum of $2,544.41, upon which was paid a dividend of 25 per cent. The holders had no security for their claim. The notes of the insolvents were not such security, and the notes could only be used as vouchers. This massing of the whole indebtedness for the purpose of proving in insolvency did not merge the whole into such unity that it became an unseverable claim. As against the debtors there was no change in liability upon the several notes as separate causes of action, and all that happened on account of the insolvency was, that 25 per cent. was paid and was to be credited on each note. Attwood v. Taylor, 1 M. & G. 307, Brunskill v. Powell, 19 L. J. Ex. 362, Franklin v. Owen, 15 C. L. T. Occ. N. 158, 185, and Richardson v. Martin, 23 W. R. 93, referred to.

Appeal allowed with costs and judgment to be entered for plaintiff with costs.