was begun under one court in a superior court, and therefore there was a dividing of their cause of action within the meaning of s. 77 of the Division Courts Act, R.S.O., c. 51.

Re Gordon v. *O'Brien*, 11 P.R. 287, approved and followed.

Public School Trustees of Nottawasaga v. *Cooper*, 15 A.R. 310, distinguished.

R. M. Macdonald for the plaintiffs.

R. B. Beaumont for the defendant.

Div'l Court.] [Dec. 19, 1894.

HAIST *v.* GRAND TRUNK R.W. CO.

Negligence—Railways—Contributory negligence—Settlement before action—Payment—Receipt—Evidence—Accord and satisfaction—Release—Estoppel—Nonsuit.

In an action for damages for negligence, whereby the plaintiff was injured in alighting from a train, the defendants denied negligence and pleaded contributory negligence, and also a payment of $10 to the plaintiff before action and a receipt in writing signed by him therefor, "in lieu of all claims I might have against said company on account of an injury received . . . by reason of my stepping off a train . . . such act being of my own account, and not in consequence of any negligence or otherwise on behalf of such railway company or any of its employees." The plaintiff replied that if he signed the receipt he was induced to do so by fraud and undue influence.

Held, that the issue raised by the document was not a distinct issue, but rather a matter of evidence upon the issues of negligence and contributory negligence, and should have been submitted to the jury, and not separately tried by the judge.

Johnson v. *Grand Trunk R.W. Co.*, 25 O.R. 64, 21 A.R. 408, distinguished.

The document would not support a plea of accord and satisfaction, nor of release, nor did it operate by way of estoppel.

It was cogent evidence of the absence of negligence on the defendants' part and of contributory negligence on the plaintiff's part; but, there being evidence of negligence on the defendants' part, the case could not have been withdrawn from the jury.

Judgment of STREET, J., reversed.

Aylesworth, Q.C., for the plaintiff.

McCarthy, Q.C., for the defendants.

Div'l Court.] [Dec. 19, 1894.

SCHMIDT *v.* TOWN OF BERLIN.

Negligence—Municipal corporations—Public park—Licensee—Knowledge.

A municipal corporation, owner of a public park and building therein, is not liable to a mere licensee for personal injuries sustained owing to want of repair of the building, at all events where knowledge of the want of repair is not shown.

King, Q.C., for the plaintiffs.

W. H. P. Clement for the defendants.