

MACMAHON, J.

JUNE 26TH, 1902.

CHAMBERS.

UNION BANK OF CANADA v. CUNNINGHAM.

Division Courts—Prohibition—Promissory Notes—Splitting Cause of Action—R. S. O. ch. 60, sec. 90 (1)—Omission by Judge to Take Down Evidence at Trial.

Motion by the defendant John Cunningham for an order prohibiting the plaintiffs from issuing execution from the 10th Division Court in the county of York, on a judgment recovered against him on the 12th June instant, for the amount of two promissory notes, one dated 1st April, 1901, payable in three months, for \$79.01, and the other, dated 4th June, 1901, payable in one month, for \$78.75, both notes being payable to the order of the defendants the Guelph Paving Company, at the Union Bank at Toronto.

J. G. O'Donoghue, for defendant.

D. W. Saunders, for plaintiffs.

MACMAHON, J.:—The defendant Cunningham resides at Guelph, and the other defendants carry on business there. Cunningham was personally served with a copy of the summons on the 14th May, under which he had twelve days to dispute the claim. On the 23rd May both defendants filed dispute notes, disputing the plaintiffs' claim and also the jurisdiction of the Court, claiming that the action should be tried at Guelph.

The amount being over \$100, and payable by the contracts of the parties at Toronto, the action was brought at Toronto as being within sec. 90 of the Division Courts Act, R. S. O. ch. 60.

The certificate of the clerk of the Division Court shews that two letters from Cunningham to the plaintiffs' solicitors, dated 3rd July and 5th July, 1901, were put in at the trial, in which he asks a renewal of one of the notes, and says he hopes to pay the other in the course of a week.

It was urged by Mr. O'Donoghue that, there being two notes, there are two contracts, and therefore the claim is not "a contract" exceeding \$100, and does not come within sec. 90, sub-sec. 1. There are two promissory notes, both by their terms payable in Toronto, and both may be sued in one action, and they form in the aggregate a sum exceeding \$100. By the Interpretation Act, R. S. O. ch. 1, sec. 8, sub-sec. 24, "Words importing the singular number . . . shall include more persons, parties or things of the same kind than one . . . and the converse."