

MEREDITH, C.J.C.P., IN CHAMBERS.

APRIL 22ND, 1910.

\*RE GREEN v. CRAWFORD.

*Division Courts—Jurisdiction — Promissory Note for more than \$100—Item in Larger Account—Merger in Mortgage—Matters of Defence—Division Courts Act, sec. 72 (1) (d)—4 Edw. VII. ch. 12, sec. 1—Mandamus.*

Motion by the plaintiff for a mandamus to the Junior Judge of the County Court of Elgin, commanding him to try this action, which was brought in the 3rd Division Court in the County of Elgin, upon a promissory note made by the defendant for \$140, to recover the amount of it with interest, amounting in all to \$154.60.

At the trial the plaintiff produced and proved the making of the promissory note. On his cross-examination it appeared that he had other dealings with the defendant and a Mrs. James, that he had an account in his books with them, that the amount of the note formed one of the items of this account, and that he had taken a mortgage from Mrs. James covering the amount of the account.

Upon this appearing, the County Court Judge stopped the case, holding that the Division Court had no jurisdiction; and the plaintiff then moved for the mandamus.

J. M. Ferguson, for the plaintiff.

Shirley Denison, for the defendant.

MEREDITH, C.J., said that the plaintiff's claim came within the provisions of clause (d) of sub-sec. 1 of sec. 72 of the Division Courts Act, R. S. O. 1897 ch. 60, as amended by 4 Edw. VII. ch. 12, sec. 1. He sued on the promissory note only, and to make out his case all that was necessary was the production of the note and proof of the signature of the defendant. The question whether the claim on it had become merged in the mortgage, if that question could or did arise, was matter of defence, and the fact that the amount of the note formed one of the items of the account kept by the plaintiff with the defendant and Mrs. James, if of any importance at all, did not affect the question of jurisdiction. These were matters of defence, which the Judge, having jurisdiction to try the action, had jurisdiction to pass upon.

If . . . it was necessary to investigate the account for the purpose of ascertaining whether the promissory note had been

\* This case will be reported in the Ontario Law Reports.