

Boyd, C.]

RE MCKAY v. CLARE.

Division courts—Jurisdiction—Splitting cause of action—Money lent—Separate loans.

Motion by the defendant for prohibition to the Seventh Division Court in the county of Essex.

On the 3rd September, 1909, the plaintiff lent \$20 to the defendant at Fort Erie on a promise to repay it in a short time. On the 16th September the defendant wrote from Montreal asking a further loan from the plaintiff, and this was responded to by sending a cheque for \$50. On the 25th September the parties met in Toronto, and another loan of \$50 was made to the defendant. The defendant made another application from Hamilton to the plaintiff, who lived in Toronto, in consequence of which a cheque for \$25 was given to the defendant. On the 2nd October they met in Hamilton and another loan of \$25 followed.

The plaintiff brought two actions in the Division Court, one for the first two sums lent, amounting to \$70; the other for the remaining \$100.

The cases went to trial, and the evidence of the plaintiff was that each of the amounts advanced was a separate and distinct loan, without any reference to any further advance or loan of any kind, and upon the defendant's promise to pay in each instance, and with an offer to give his several promissory notes for each sum if desired.

The defendant objected to the jurisdiction, on the ground that the whole was one transaction, suable as one cause of action for money lent and could not be split into two actions: Division Courts Act, R.S.O. 1897, c. 60, s. 79.

The objection was overruled, and judgment entered for the plaintiff in both cases.

The motion for prohibition was on the same ground.

The Chancellor referred to *Re Gordon v. O'Brien*, 11 P.R. 287, 294; *Re Clark v. Barber*, 26 O.R. 47; *Re McDonald v. Dowdall*, 28 O.R. 212; *Re Real Estate Loan Co. v. Guardhouse*, 29 O.R. 602; *Re Bell v. Bell*, 26 O.R. 123, 601; and said that the present case stood clearly apart from those cited, which were decisions on causes of action arising out of one controlling contract. The same idea of connection or continuity exists where liabilities are incurred in a series of dealing which are linked together, in this sense that each dealing is not intended to terminate with itself but to be continuous, so that one item shall go with the next item and so form one entire demand. But such