

gave to the plaintiffs promissory notes, the balance being charged in open account.

The defendants made an assignment for the benefit of their creditors. The plaintiffs filed with the assignee an affidavit of claim, in the body of which they stated their claim to be \$2,554.41 "for merchandise." They received from the assignee 25 cents on the dollar and applied it generally on the whole claim.

They then instituted four actions against the defendants, one in the High Court for part of their claim, and three actions in the above Division Court on three individual promissory notes, not included in the High Court claim.

One of the Division Court actions was discontinued. In the remaining two Division Court actions the plaintiffs gave no credit for the dividend which they had received, but, after the evidence had been taken, they admitted that they should have done so.

P. D. Crerar, K.C., for defendants, contended that in bringing separate actions in the Division Court the plaintiffs had split their cause of action within the meaning of sec. 79 of the Division Courts Act.

Darcy Tate, for plaintiffs, cited *Real Estate Loan Co. v. Guardhouse*, 29 O. R. 602; *Re Franklin v. Owen*, 15 C. L. T. Occ. N. 105, 158, 185; *Clark v. Barber*, 26 O. R. 47.

MONCK, J.—I think the facts in the present case are distinguishable from those in the ruling cases, and that, had an action been brought in the High Court, there would have been but one count in the statement of claim.

The plaintiffs elected in the proof filed with the assignee to consider their claim a consolidated one for merchandise, and could so have declared in the High Court action. They accepted their dividend and applied it on the corpus of their claim.

I find, therefore, that in these several complaints the cause of action has been split within the meaning of sec. 79, and that this Court has no jurisdiction to try them.

WINCHESTER, MASTER.

MARCH 23RD, 1903.

CHAMBERS.

ST. AMAND v. INTERSTATE CONSOLIDATED MINERAL CO.

Particulars—Master and Servant—Action under Workmen's Compensation Act—Defence of Statutes—Right of Plaintiff to Particulars.

Motion by plaintiff for particulars of a paragraph of the defence. Action for damages for injuries sustained by plain-