EQUITABLE ASSIGNMENT AND JOINDER OF PARTIES

McMAHON v. GILBERD AND CO. LTD.,

[1955] N.Z.L.R. 1206 (C.A.).

In the above case the plaintiff was a bottle dealer who for many years had been receiving into his depot, and paying for, large numbers of bottles of all sorts. The defendant company was a manufacturer of aerated waters and cordials. When the company sold its beverages to its customers it did not sell the bottle, which remained its property, but sold the contents only. Its practice was to charge a "deposit" of 3d on each standard-sized bottle, which was refundable on the return of the bottles. Since 1948, however, the defendant company had discriminated against dealers, in that the reward it paid to them was less than the amount of the deposit which it undertook to refund to its customers when they returned their empty bottles.

The plaintiff claimed from the defendant company the amount of the deposits received by the defendant company from its customers in respect of its bottles collected by the plaintiff. The company counter-claimed for an injunction, and for an order for delivery to it of its bottles in the possession of the plaintiff. The learned Chief Justice non-suited the plaintiff and held that the defendant company was entitled upon tender of the lower reward to the plaintiff, to an order as prayed. The plaintiff appealed.

In the Court of Appeal, the plaintiff put forward the argument, inter alia, that he was entitled to recover the amount of the deposit as assignee of a chose in action under an equitable assignment or a chain of equitable assignments. It was held, however, that the plaintiff had failed to prove his title as assignee of the customer's right to a refund in respect of any particular bottle or group of bottles, and that the Court would not presume from a general set of circumstances the existence, in any one particular case, of a chose in action or its assignment. The appeal was dismissed. The plaintiff failed, therefore, to prove his title as assignee under an equitable assignment of the customer's chose in action against the company.

During the hearing of the appeal the question was raised whether the non-joinder of the legal owners of the choses in action (the company's customers) might not be fatal to the plaintiff's claim. This point was adverted to by Turner J. in his judgment (at 1218-9) as follows:

> In an action upon an allegedly assigned chose in action, it is indispensable that the existence of the chose in action, and then its subsequent assignment or assignments, must be proved. Indeed, in the generality of cases it is necessary, where an equitable assignment is alleged, to join as a party to the action the person in whom the legal title to the chose in action is vested: Snell's Principles of Equity, 22nd Ed., 55; Hanbury's Modern Equity, 5th Ed., 89; Durham Bros. v. Robertson, ([1898] 1 Q.B. 765); Performing Right Society, Ltd. v. London Theatre of Varieties, Ltd. ([1924] A.C. 1, 13, 18, 30); Robson v. McWilliam ((1905) 24 N.Z.L.R. 694; 7 G.L.R. 589). This is not an absolutely invariable requirement; and it was said in William Brandt's Sons and Co. v. Dunlop Rubber Co., Ltd. ([1905] A.C. 454, 462) by Lord Macnaghten that no action is now dismissed for want of parties; and in the circumstances of that particular case (quite different, it may be noted, from those now before the Court), an action by an equitable assignee was allowed to proceed without the assignor being joined. In the present case, this point was, I think, specifically waived by the respondent at the hearing of the appeal; at least, when one of the members of the Court inquired whether the non-joinder of the legal owners of the chose in action might not be fatal, counsel for the respondent categorically replied that he did not so argue. But for this, I might have been disposed, for myself, to listen to argument that the joinder of the legal owners was, in this case, essential to the success of the appellant; but as the point was expressly not taken, I pass over it in the present case.

The purpose of the present article is to make the respectful submission, however, that if the plaintiff had been able to prove his title as assignee - or at least to raise a

presumption of assignment - it would not have been necessary for him to join the assignors in his action. It will be readily appreciated that to have been required to do so - would have presented an insurmountable obstacle to the plaintiff's claim.

From the earliest times the common law view was that a chose in action was not assignable. The two principal reasons for this attitude seem to have been, firstly, the peculiarly personal character of the relationship between obligor and obligee, preventing the substitution of other parties for the original ones, and, secondly, the fear of encouraging maintenance where the assignee was more powerful than the assignor. That both these objections are inadequate is plainly demonstrable(1), and it appears that the common law courts themselves did not invariably insist on the rule if the justice of the case demanded that it be mitigated: see Master v. Miller (1791), 4 T.R. 320 at 340-1; 100 E.R. 1042 at 1053.

The principal effect of the common law rule in practice was that the assignee of a chose in action was unable to bring an action against the obligor in his own name. In order to recover the benefit of the chose in action he was obliged to persuade the assignor to join with him as co-plaintiff in the action, obviously an unsatisfactory and uncertain expedient.

Apart from certain exceptions, however, the common law rule was an inveterate one(2), and its inconvenience soon led to the intervention of equity. From an early date the Court of Chancery was willing to draw a distinction between a mere right of litigation, which was peculiarly personal, and a right of property to which litigation was merely incidental. While the former remained unassignable, assignments of the latter were permitted in equity: Dickinson v. Burrell (1866), L.R. 1 Eq. 337, at 342-3; Ellis v. Torrington, [1920] 1 K.B. 399 (C.A.).

An equitable assignment required no particular form and might even be by word of mouth where the law did not prescribe that it should be by writing (e.g. future rents from land). The essential requirement was that the

parties should clearly intend that the assignee was to have the benefit of the chose in action. "The language is immaterial if the meaning is plain": Brandt's Sons & Co. v. Dunlop Rubber Co., Ltd., [1905] A.C. 454 at 462, per Lord Macnaghten. As between assignor and assignee the assignment was binding once it had been communicated to the assignee, even though notice had not been given to the debtor: Re Trytel, [1952] 2 T.L.R. 32.

Did equity permit the assignee to sue the debtor in his own name? The answer depended on whether the subject-matter of the assignment was a legal or an equitable chose in action, and whether the assignment was absolute.

The exclusive jurisdiction of the Court of Chancery in respect of equitable choses enabled equity to ignore the common law prohibition against assignments and to make its own rules: Warmstrey v. Tanfield (1628) 1 Rep. Ch. 29; 21 E.R. 498. Thus, if the assignment were total and absolute, i.e., if it were not conditional, nor by way of charge, nor of a part only of the fund assigned, then equity would permit the assignee to sue the obligor in his own name: Warmstrey v. Tanfield (supra); Blake v. Jones (1795), 3 Anst. 651; 145 E.R. 996; Cator v. Croydon Canal Co. (1841), 4 Y. & C. Ex. 593 at 593-4; 160 E.R. 1149-50. Thus, in Deeks v. Strutt (1794), 5 T.R. 690; 101 E.R. 384, where there was an absolute assignment of a beneficial interest in a legacy, it was held that the assignee could sue the executor in his own name. The absolute character of the assignment made it unnecessary to examine the state of accounts between the parties.

On the other hand, a non-absolute assignment of an equitable chose in action always required the joinder of the assignor in an action brought by the assignee.

> . . . The absence of such parties might result in the debtor being subjected to future actions in respect of the same debt, and moreover might result in conflicting decisions being arrived at concerning such debt: Re Steel Wing Co., Ltd., [1921] 1 Ch. 349 at 357, per P.O. Lawrence J.

The debtor or trustee was in the position of a stakeholder and might reasonably desire to know the state of accounts between assignor and assignee.

An assignee of a legal chose in action, however, could never sue upon it in his own name, since a common law court, in which alone it was enforceable, would not recognize the assignment. But equity acts in personam, and if the assignor refused to sue or join in an action by the assignee equity would, upon the assignee giving him an indemnity against costs, compel him by common injunction to give to the assignee the use of his name and would forbid him on pain of personal constraint to sue on his own account. Prior to the Judicature Act, 1873 (U.K.), therefore, it might be necessary for the assignee of a legal chose in action to bring a preliminary suit in Chancery before commencing the common law action.

The position as it existed before the Judicature Act may now be summarized as follows:

1. An assignee of a legal chose in action could sue the debtor only by joining the assignor as co-plaintiff in the action. If necessary equity would come to the assistance of the assignee by compelling a recalcitrant assignor to join with him in his action.

2. (a) An assignee of an equitable chose in action would be obliged to join the assignor in an action against the trustee where the assignment was non-absolute.
   (b) Where, however, there was an absolute assignment of an equitable chose in action, the assignee might sue in his own name.

The basic reason for the distinction was that common law and equity held opposing views as to the validity of assignments. This unsatisfactory cleavage between the legal and equitable views as to assignments could not be expected to continue for ever.

However, with the enactment of the Judicature Act, 1873 (U.K.) some important changes were effected. The occasion of the amalgamation of the Superior Courts of Law and

Equity into the Supreme Court of Judicature was considered to be an appropriate time for a review of the position regarding the assignability of choses in action. One important result of the fusion was that it was no longer necessary for an assignee to bring a separate suit in Chancery in order to join the assignor as co-plaintiff in an action to enforce his rights under a chose in action. Now that all the divisions of the High Court administered both law and equity concurrently it was possible for the assignee to bring a single action by joining the assignor as co-defendant: Bowden's Patents Syndicate Ltd. v. Herbert Smith & Co., [1904] 2 Ch. 86 at 91, per Warrington J.(3).

But the Judicature Act, 1873 (U.K.), went further than this. By s. 25 (6) of the Act a new statutory form of assignment was introduced which permitted the assignee of a legal or equitable chose in action to sue in his own name provided certain requirements were complied with. This section is now embodied in s. 136 (1) of the Law of Property Act, 1925 (U.K.), and in New Zealand in s. 130 (1) of the Property Law Act 1952, which provides:

> 130. (1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal or equitable thing in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim that debt or thing in action, shall be and be deemed to have been effectual in law (subject to all equities that would have been entitled to priority over the right of the assignee if this Act had not been passed) to pass and transfer the legal or equitable right to that debt or thing in action from the date of the notice, and all legal or equitable and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor.

The position after the enactment of these provisions may be summarized, according to whether or not the assignee is given the right to sue without joining the assignor:

1. Assignments giving the assignee the right to sue in his own name may be, either
   (a) Legal (i.e. statutory assignments of legal or equitable choses in action where:
      (i) the assignment is absolute,
      (ii) it is by writing under the hand of the assignor, and
      (iii) express notice in writing has been given to the debtor or trustee; or
   (b) Equitable assignments of equitable choses in action, whether in writing or not, where:
      (i) the assignment is absolute, and
      (ii) express or constructive notice is given to a trustee.

2. Assignments requiring the joinder of the assignor are: All equitable assignments of legal or equitable choses in action where:
   (a) the assignment is non-absolute, i.e., where it is:
      (i) by way of charge only,
      (ii) conditional,
      (iii) an assignment of part only of the debt or fund; and
   (b) express or constructive notice is given to the debtor or trustee.

This classification, it will be observed, omits a further group namely, equitable assignments of legal choses in action where the assignment is absolute but does not comply with the other requirements of a statutory assignment. Stated in another way, it omits absolute assignments of legal choses which fail to come within the section because either (a) they are not in writing signed by the assignor, or (b) express written notice of assignment has not been given to the debtor.

It is proposed now to examine this group of absolute equitable assignments of legal choses in action and to submit that, contrary to the prevailing view, they fall within the first category mentioned above, so that it is not necessary for the assignee to join the assignor in an action against the debtor.

Before the Judicature Act it was always necessary to join the assignor of a legal chose in action if the assignee wished to sue upon it, whether the assignment were absolute or not. The view taken by leading textbooks dealing with the subject is that the position of an assignee under a non-statutory assignment of a legal chose in action is unaffected by the Act and that he must join the assignor as before. Thus Cheshire and Fifoot, Law of Contract (3rd ed. 1952) 413 say:

> It is still the law that an assignee of a legal chose in action, who for some reason or other cannot prove a good statutory assignment, must make the assignor either a co-plaintiff or a co-defendant to any action that he brings.

See also Salmond and Williams on Contract, 458-9; Hanbury, Modern Equity (5th ed.), 89; Marshall, op.cit., 78-9. The learned authors of these textbooks deal with the question in general terms only but it is clear that in their view no distinction is to be drawn between absolute and non-absolute assignments. Halsbury, however, goes further and states that, if the chose in action is legal,

> . . . the assignor, or if he is dead his legal personal representative, must be a party to the action either as plaintiff or defendant, even where the equitable assignment is absolute [emphasis added], and a fortiori where the assignment is by way of a security only, for he then has a right to redeem: 4 Halsbury's Laws of England (3rd ed.), 511.

It is submitted, however, that the commentators have erred in applying this rule to non-statutory assignments of legal choses in action. It is submitted that such assignments are in fact effective to enable the assignee to sue in his own name.

In the first place, the view that the assignee must join the assignor even where the assignment is absolute cannot be supported on grounds either of common sense or consistency. It has been shown that from the earliest times equity took the view that an assignee of an equitable

chose in action might sue the trustee in his own name if the assignment were absolute, since the character of the transaction rendered it unnecessary to examine the state of accounts between assignor and assignee. This eminently sensible doctrine was in fact incorporated in the Judicature Act, so that thereafter absolute assignments of legal as well as equitable choses were valid to pass the right to sue. It would appear somewhat anomalous, then, if a non-statutory assignment of a legal chose in action, even if absolute, did not pass the right to sue without joining the assignor.

Apart from the question of notice, the only reason why an absolute assignment should fail to come within the section would be that it is not in writing signed by the assignor. Yet writing was never essential for an equitable assignment, and it is clear that, as equitable assignments are still possible, the absence of writing will not invalidate an equitable assignment that is otherwise good. In this respect the section bears no comparison with a provision such as s. 4 of the Statute of Frauds which provided that no action should be brought to enforce certain contracts unless the agreement were evidenced by writing. Section 130 (1) of the Property Law Act 1952 merely simplifies the procedure whereby assignees of legal choses may sue to recover under the chose, but it does not increase the scope of assignments that were already valid in equity, nor does it affect the validity of equitable assignments in the least.

It is submitted that the view, taken by the learned authors referred to above, that the assignor must still be joined as a party by the assignee, proceeds upon an incorrect appraisal of the effect of the Judicature Act upon absolute assignments. The view is based upon the premise that in order to determine what now constitutes a good equitable assignment it is necessary to determine what constituted a good equitable assignment prior to the Judicature Act. This is true enough as far as it goes, but it fails to take into account the effect of the Judicature Act upon the old common law rule which forbade assignments of choses in action in general.

The Judicature Act provided that where the rules of law and the rules of equity conflict the latter shall prevail (cf. The Judicature Act 1908, (N.Z.) s. 99). The effect of this provision upon assignments of choses in action is so important that, were it not for the special provisions in the Act itself (s. 125 (6)) permitting legal assignments, its significance would have been recognized immediately. For was there any conflict between law and equity so sharp as that in the field here being discussed? If the rules of equity are to prevail over the rules of law, it is clear that the old common law prohibition of assignments of choses in action must submit now to the recognition of them in equity: (see the remarks of Lord Macnaghten in Brandt's case (supra, at 461)). Once this is conceded it becomes clear that, except where required by equity itself, the need to join the assignor as a party in an action brought in a court having equitable jurisdiction by an assignee of a legal chose in action is now obsolete, whether the assignment falls within the section or not. In equity an absolute assignment of an equitable chose gave the assignee the right to sue in his own name, and, since the Judicature Act, 1873 (U.K.), the same right must accrue to absolute assignees of legal choses in action. Where, however, the assignment was non-absolute (as where it was by way of charge only) equity always required the assignor to be joined, even in the case of equitable choses, and the same rule must still apply to assignments of legal choses.

It is proposed now to examine such authorities as have been cited in support of the rule that joinder is still required. The most comprehensive list is given in 4 Halsbury's Laws of England (3rd ed.) 511, in a footnote to the passage already quoted (p. 59, supra). These are as follows:

1. Durham Brothers v. Robertson, [1898] 1 Q.B. 765 (C.A.). In this case a firm of builders assigned in writing the benefit of certain building contracts to the plaintiffs from time to time, "until the money with added interest be repaid to you". It was held that this was merely a conditional assignment, valid as such in equity only, and that the assignors must therefore be joined. Chitty L.J. said (at 769-70):

> . . . As is well known, an ordinary debt or chose in action before the Judicature Act was not assignable so as to pass the right of action at law, but it was assignable so as to pass the right to sue in equity. In his suit in equity the assignee of a debt, even where the assignment was absolute on the face of it, had to make his assignor, the original creditor, party in order primarily to bind him and prevent his suing at law, and also to allow him to dispute the assignment if he thought fit. This was a fortiori the case where the assignment was by way of security, or by way of charge only, because the assignor had a right to redeem. Further, the assignee could not give a valid discharge for the debt to the original debtor unless expressly empowered so to do.

This passage is clearly the source of that part of the text in Halsbury already quoted. But it is equally clear that Chitty L.J. was merely stating the position as it was before the Judicature Act. Furthermore, the assignment in question was conditional only, and the Court was not required to consider the effect of the Judicature Act upon absolute assignments.

2. Cathcart v. Lewis (1792), 3 Bro. C.C. 517; 29 E.R. 676. This was an action brought by the assignee of a judgment, where it was held that the assignee was a necessary party. As the case was decided before the Judicature Act it is plainly no authority for the proposition for which it is cited.

3. Harper & Co. v. Bland & Co. Ltd. (1914), 84 L.J.K.B. 738. The master of a steamer executed for consideration a written authority in favour of the plaintiffs to collect freight charges due to owners of the steamer. It was held by Bailhache J. that the document was a mere authority to collect the freight on behalf of the owners of the steamer, and was neither a legal nor an equitable assignment of the freight; but that, had it been an assignment at all, it would have been an equitable assignment, and that on either view the plaintiffs were not entitled to sue for the freight in their own name. It is clear, however, that the remarks of Bailhache J. as to the document being an equitable

assignment were obiter. The terms of the document would seem to indicate a conditional assignment rather than an absolute one.

4. Performing Right Society, Ltd. v. London Theatre of Varieties, [1924] A.C. 1. Here there was an assignment by deed of certain performing rights from a firm of music publishers to the plaintiff Society, to be held by the Society for so long as the publishers remained members of the Society. In an action for an injunction for infringement of their performing rights the plaintiffs admitted that their claim lay in equity only, but contended that since the fusion of law and equity by the Judicature Acts an equitable owner of property could in every case sue for a perpetual injunction to protect such property without joining the legal owner as a party. The House of Lords dismissed this contention. In the words of Viscount Cave L.C. (at 14):

> . . . it was always the rule of the Court of Chancery, and is, I think, the rule of the Supreme Court, that, in general, when a plaintiff has only an equitable right in the thing demanded, the person having the legal right to demand it must in due course be made a party to the action . . . . If this were not so, a defendant after defeating the claim of an equitable claimant might have to resist like proceedings by the legal owner, or by persons claiming under him as assignees for value without notice of any prior equity, and proceedings might be indefinitely . . . multiplied.

This passage might be thought to lend support to the accepted view, but it will be observed that Viscount Cave was dealing with a case of a conditional assignment. Furtheremore, he continues:

> No doubt the rule does not apply to a mortgagor [since the Judicature Act, 1873 (U.K.)] and there may be special cases where it will not be enforced [as in Brandt's case] where the defendant disclaimed any wish to have the legal owners joined as parties.

With regard to the case of a mortgagor of a chose in action since the Judicature Act, Viscount Cave may possibly

have had in mind the very situation here being considered, i.e., an absolute but non-statutory assignment by way of mortgage, but it seems more probable that he was merely referring to legal assignments under s. 25 (6) of the Act.)

5. Williams v. Atlantic Assurance Co. Ltd., [1933] 1 K.B. 81 (C.A.). Here a firm of traders insured certain cotton goods which had been pledged to them for £8000 upon an open policy of marine insurance. The goods were lost at sea and the firm, which had incurred a liability of £7000 to the plaintiff, assigned to him the benefit of all claims and all money which might become due under the policy, subject to the right of the firm to payment of £1000 of such money if and when it was received by the plaintiff. It was held that the assignment being of part only of the chose in action against the insurers, was ineffectual to pass the right to sue at law and that the assignor must therefore be joined as a party in an action by the plaintiff against the insurers. Here, again, the assignment was non-absolute, and the requirement of the joinder of the assignor was in conformity with the rules of equity.

As can be seen, the above authorities do not lend any real support to the view taken by the commentators that the assignee under a non-statutory assignment of a legal chose in action must generally join the assignor in an action brought by him to recover the debt, since they all relate to non-absolute equitable assignments, whereas the problem relates to absolute equitable assignments. It appears, in fact, that the prevailing view relies principally upon an erroneous interpretation of the dicta of Chitty L.J. in Durham Bros. v. Robertson.

In Robson v. McWilliam (1905), 24 N.Z.L.R. 694; In re Matahina Rimu Co. Ltd., [1941] N.Z.L.R. 490, 498; Schneideman v. Barnett, [1951] N.Z.L.R. 301, 307; and Pulley v. Public Trustee, [1956] N.Z.L.R. 771, 775, it was said that joinder of the assignor is necessary, but in each case there was no examination of possible effect of the Judicature Act and the rule was assumed to be the same for absolute and non-absolute equitable assignments.

It must be admitted, however, that the contention that has been put forward presents one apparent difficulty.

Where the assignee takes under a non-statutory assignment of a legal chose in action, then, even if the assignment be absolute, the assignor remains the legal owner of the chose in action and the title of the assignee is purely equitable. The rights of the assignee depend entirely upon the legal title of the assignor. It is submitted, however, that the difficulties presented by this situation are purely of a technical nature. What is the true position of the assignor under an equitable assignment? No doubt he is trustee for the assignee; but where the assignment is absolute in form he has no interest whatsoever in the chose in action assigned and the need to join him in an action brought by the assignee would be a mere formality. If there were competing equitable assignees of the chose, the first to give notice to the debtor would have priority and the presence of the assignor would not be necessary in an action brought by him. Even in the case of competing equitable and legal assignees it is improbable that the presence of the assignor as a party would have any special advantages. The situation would be no different from that of competing legal assignees where, say, the question of notice was in dispute.

It is true, of course, that as between assignor and assignee the relationship of trust between the parties is important. Thus, if X gives an absolute equitable assignment of a legal (or equitable) chose in action to A and then subsequently B gets a valid legal assignment of the chose from X before A has given notice to the debtor, A has a good claim against X for breach of trust. But if A sues the debtor nevertheless, or if the debtor resolves to interplead between the claims of A and B, why should X be joined as a party? Clearly, if the debtor considers that the assignment to A and B were absolute he will not be concerned to have X joined as a party for fear of X commencing similar proceedings as legal owner. For, now that the rules of equity prevail, X could not be expected to meet with success if he proceeded against the debtor after the Court had adjudicated upon an absolute assignment of the chose from X to A or B.

In spite of a considerable amount of authority for the view that generally equitable assignments of legal choses do not pass the right to sue without joining the

assignor, no authoritative case has been found in which it was held that an assignee under an absolute equitable assignment is compelled to join the assignor. It appears, perhaps, that debtors generally have not considered it necessary to contest the point. Some support for the view put forward here may, however, be found in the judgment of P.O. Lawrence J. in Re Steel Wing Co. Ltd., [1921] 1 Ch. 349, where he says (at 356):

> In my opinion the contention that in an action by an assignee of part of a debt the Court would require the persons entitled to the remainder of the debt to be parties is well founded. Although it is not necessary to decide whether in the circumstances of the present case the Court would insist upon Pauling [who was an assignor of the debt by absolute assignment] being made a party to such action, even if the assignment of October, 1917, were held not to have passed the legal right to the debt, I doubt very much whether it would be absolutely necessary to join Pauling as a party to any such action, as he would be merely a bare trustee of the debt for Mooney and his assignee and the Court could adjudicate completely and finally upon the rights of the parties in his absence (see remarks of Lord Macnaghten in Brandt's case).

Some situations in which the assignor need not be joined as a party by an equitable assignee of a legal chose have already been recognized. Joinder of the assignor will not be required:

1. if he has no interest in the matter and the debtor disclaims any wish to have him present: see Brandt's case (supra) (where the debtor had already wrongly paid out to the assignor, and received a discharge of the debt from him, after receiving notice of assignment);
2. if the equitable assignee has the power to give a good discharge: see dicta of Greer L.J. in Williams v. Atlantic Assurance Co. (supra, at 100);
3. if the assignor cannot effectively be served or joined, as where the assignee is a company which has gone into

liquidation: Tolhurst v. The Associated Portland Cement Manufacturers (1900) Ltd., [1903] A.C. 414; or where he is an alien enemy: Wilson v. Ragosine & Co. Ltd. (1915), 84 L.J.K.B. 2185.

It is submitted, however, that the first exception is merely one application of the general proposition propounded above; and that the second and third exceptions relate only to the case of non-absolute assignments.

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(1) See Marshall, The Assignment of Choses in Action, (1950) at 35-67.

(2) Not quite so. Apart from Master v. Miller (already cited), which indicates that the courts of common law were prepared on occasion to waive the rule, there was a kind of equitable jurisdiction of the common law courts which permitted assignments in cases of fraud by the assignor to which the debtor was a party: see Marshall, op.cit., 74-77.

(3) This development was actually brought about somewhat earlier by s. 85 of the Common Law Procedure Act, 1854 (U.K.).