

before he was called upon to hand over the consideration or to pay the sum of \$5,900, either to Ash or to "the various persons entitled thereto." Until the contract was carried out, neither Ash nor those persons were entitled to the \$5,900 or to any part of it. Whatever might be the law as to a part assignment of a simple chose in action, the statute (Conveyancing and Law of Property Act, sec. 49) does not extend to an assignment so as to vest in the assignee the right to sue without joining his assignor. His assignor is the person to carry out the agreement, and he is entitled to the consideration money or part of it only upon so doing.

Where, as in this case, questions arise which, although not going to the root of the contract, and therefore not entitling the parties to rescind, yet affect the rights of the parties under the agreement, either to have an account taken or to make deductions or in some other way to modify or alter the carrying out of the strict terms of the agreement, the parties to the contract must always be parties to an action to enforce it, notwithstanding any intermediate rights which they may have endeavoured to give to others, and notwithstanding any rights which may arise under the contract in favour of third parties whose claims are subordinate to the carrying out of the contract.

Reference to *Conlan v. Carlow County Council*, [1912] 2 I.R. 535, 542; *Durham Brothers v. Robertson*, [1898] 1 Q.B. 765, 773; *William Brandt's Sons & Co. v. Dunlop Rubber Co.*, [1905] A.C. 454; *Graham v. Crouchman* (1917), 41 O.L.R. 22; *Seaman v. Canadian Stewart Co.* (1911), 2 O.W.N. 576, 579.

The learned Judge said that he was reluctant to dismiss the actions for want of the proper parties; but, having given an opportunity to the plaintiffs to remedy the defect, and they not having taken advantage of it, no other course was open.

Actions dismissed with costs.

SUTHERLAND, J., IN CHAMBERS.

DECEMBER 31ST, 1919.

RE CANUCK AUTOMOBILES LIMITED.

*Company—Winding-up—Petition by Shareholder—Insolvency—
Failure of Proof—Winding-up Act, R.S.C. 1906 ch. 144,
sec. 3.*

A petition by the holder of 40 shares of the capital stock of the company for an order under the Dominion Winding-up Act for the winding-up of the company.