

more money. Moyer was to invest as he pleased. Moyer then said he had bought a parcel for \$16,000, and put the \$1,000 into it, and sent Dolph the agreement calling for \$2,200 further, in instalments. Moyer had no right to call for this, and Dolph was under no obligation to sign. He kept the agreement, satisfied himself, and signed. He could not now be heard to say that he did not promise to pay as he covenanted, and it was absurd to say that the \$1,000 was paid as a condition precedent to an understanding that he was not to comply with his covenant. This defence failed.

More serious was the second defence. Moyer said the parcel cost \$16,000, so Dolph was obtaining his one-fifth at cost. The price was \$15,000, and this was known to Moyer, though he pretended he only afterwards found it out.

Moyer, after assigning the agreement, was now attempting to aid Dolph in resisting payment, and proclaimed his own fraud to assist his friend and defeat his assignees. He made a weak and manifestly untrue explanation of his conduct.

The misrepresentation made was material, and gave Dolph an equity entitling him to rescind the contract; and the assignees of the contract took subject to this equity.

If for any reason the right to rescind had been lost so that the claim would be for deceit, this would not attach to the contract in the hands of the assignees: *Stoddart v. Union Trust Limited*, [1912] 1 K.B. 181; but the reasoning of that case was based upon the distinction between the right to rescind and the right to claim damages. See also *T. & J. Harrison v. Knowles & Foster*, [1918] 1 K.B. 608.

An assignee of a chose in action takes subject to all rights of set-off and other defences available against the assignor; but, after notice of an assignment of a chose in action, the debtor cannot, by payment or otherwise, do anything to take away or diminish the rights of the assignee as they stood at the time of the notice. That is the sole exception: per James, L.J., in *Roxburghe v. Cox* (1881), 17 Ch.D. 520, 526.

This, however, does not prevent the assignor from disclosing his own earlier fraud, nor does it preclude the defendant from relying upon it.

The action failed; but, under the circumstances, there should be no costs. So far as the defendant knew when sued, he had no real defence, and only found out Moyer's unworthy conduct pending suit. Moyer's unjust attempt to make \$200 relieved the defendant from \$2,200, and defeated the plaintiffs to that extent.