

husband's earnings must have, in whole or in part, purchased the food which was supplied to the boarders.

The parties should be left just as they were, the action being dismissed without costs, and the counterclaim being also dismissed without costs.

HODGINS, J.A.

DECEMBER 30TH, 1919.

\*BEST v. BEATTY.

\*CALVERT v. BEATTY.

*Chose in Action—Assignment of Part of Debt—Contract—Performance—Actions by Assignees—Necessity for Joining Assignor as Party—Conveyancing and Law of Property Act, sec. 49—Refusal of Plaintiffs to Add Assignor—Dismissal of Actions for Want of Parties.*

Actions for money demands.

The actions were tried together without a jury at a Toronto sittings.

J. J. Gray, for the plaintiffs.

W. J. McCallum, for the defendant.

HODGINS, J.A., in a written judgment, said that the plaintiffs declined to add Ash, their assignor, as a party plaintiff, and no application was made to add him as a defendant. Counsel for Beatty, the defendant in both actions, contended that, without Ash as a party, the plaintiffs could not succeed because the assignment was of only a part of the debt.

Whatever the plaintiffs' rights might be under the terms of the agreement itself, or under the assignments from Ash, they could not recover except subject to whatever rights arose out of the agreement which contained the covenant on which they sued. The case is distinguishable from one where the party to whom the money is payable is merely a trustee for others. Here no trust was disclosed, nor was there any proof that the plaintiffs were entitled to the money within the terms of the agreement. Suing alone, they could not recover either upon the terms of the covenant in the agreement itself or by virtue of the assignments by Ash to them. The sum of \$5,900 was part of the consideration for the entire agreement between Ash and the defendant, and the defendant was entitled to require Ash to carry out his agreement strictly