and Courts of Equity were accustomed to recognize the right of an assignee of a chose in action arising on contract, and would entertain a suit by the assignee in his own name for the recovery of the chose in action assigned. The Court of Chancery would not, however, entertain jurisdiction prior to R. S. O. c. 49, s. 21, to enforce such claims where the assignee could recover at law by using the name of the assignor as plaintiff.

With regard to equitable choses in action assigned, these being only recoverable in equity, wherever the assignment was absolute, the assignor was an unnecessary party to a suit for its recovery. If, however, the assignor retained an interest in the chose in action assigned, he was required to be a party to the proceedings. With regard to suits in equity respecting legal choses in action, the case was different, and the assignor was required to be added even though the assignment were absolute, because any proceedings by the assignee would not constitute a bar to proceedings at law by the assignor for the recovery of the chose in action assigned.

The effect of R. S. O. c. 116 s. 7, was to enable legal choses in action arising out of contract to be assigned, so as to confer on the assignee a legal title which he could enforce in a court of law in his own name. While a good equitable assignment of a chose in action arising out of contract may be made by parol (*Heath* v. *Hall*, 2 Rose 271; 4 Taunt 326), an assignment of a legal chose in action, to be a valid transfer of the legal title under the statute, must be in writing.

Since the Judicature Act the difference which formerly existed between courts of law and equity is abolished, the court which now exists for the determination of civil rights, is at once a court of law and a court of equity, and according to the oft quoted sec. 17. and the Judicature Act ss. 10, whenever there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity are to prevail.

It therefore becomes a question whether the former rules of equity or the rules of the common law, as altered by statute (R. S. O. c. 116), as regards parties to suits for the recovery of choses in action which have been assigned, are to govern the High Court of Justice.

In the recent case of *Ward* v. *Hughes*, 8 O. R. 138, it seems to have been assumed by the Common Pleas Division that the question is now altogether governed by the statute. It seems open to doubt, however, whether this is the proper conclusion. In that case the action was brought on a covenant in a mortgage for the payment of the mortgage debt. The plaintiff was the mortgagee, but he had assigned the mortgage to one Turner, who had assigned it to the plaintiffs' wife. The defendant contended that the action should have been brought by the latter. Evidence was given, however, on behalf of the plaintiff to show that the assignments though absolute in form were not so in fact, but only assigned part of the beneficial interest in the mortgage debt, and it was argued that therefore the assignments were not within the statute R. S. O. c. 116, inasmuch as the assignee was not entitled to the whole beneficial interest in the chose in action assigned. Under such a state of facts as was disclosed by the plaintiff, a court of equity would have held that both assignor and assignee were necessary parties to the action, but the majority of the judges of the Common Pleas Division seem to have been of opinion that the question was governed entirely by the statute, and that the assignee taking under an assignment absolute in form must sue, and they appeared to incline to the opinion that he alone was a necessary party. A