The plaintiff says that in retaining his solicitor to prosecute this action he pledged his own credit to him, and has no right of indemnity against the assignors.

This is champerty of the plainest description. . . .

[Reference to 2 Inst. 208; R. S. O. 1897 ch. 327; Kenney v. Browne, 3 Ridg. P. C. 362, 498, et seq.; Re Solicitor, 14 O. L. R. 464; Carr v. Tannahill, 30 U. C. R. 217, and cases there collected; Bell v. Warwick, 50 L. J. Q. B. 382.]

Does the fact that the assignment is champertous afford any answer to the plaintiff's claim? The assignment is absolute, and vests the right of action in the plaintiff, and he alone can sue. Is the existence of a champertous agreement between the plaintiff and his assignors any reason why the defendant should not be compelled to pay his debt? Is it not entirely res inter alios acta—a matter of no concern to the defendant? So the plaintiff presents his case; and, no doubt, many American decisions go to support his contention. "The weight of authority, however, supports the rule that the fact that there is an illegal and champertous contract for the prosecution of a cause of action is no ground of defence thereto, and can only be set up between the parties when the champertous agreement itself is sought to be enforced:" 6 Cyc. 881. This is the law of England and Ontario only when the action is brought by the person in whom the cause of action is originally vested. When the action is brought by an assignee, in his own name, and the assignment is shewn to be champertous, then the Court treats it as "invalid," to use the word of the statute (R. S. O. 1897 ch. 327, sec. 2), and void for all purposes; and, this illegality appearing, the Court refuses, upon grounds of public policy, its aid to the plaintiff, whose title is tainted by illegality: Prosser v. Edmonds, 1 Y. & C. Ex. 481; Little v. Hawkins, 19 Gr. 267; Hilton v. Woods, L. R. 4 Eq. 432; . . . Power v. Phelan, 4 Q. L. R. 57. . . .

In this way the case is determined quite apart from the doctrine with which the question here arising is sometimes coupled in some of the earlier cases—that at common law, as well as in equity, a mere right to sue was not regarded as being capable of assignment. Now, by statute, a cause of action arising out of contract can be freely assigned: see cases collected upon an earlier application in this case (ante 12). but this still leaves open for consideration all questions arising upon the illegality of the transaction.

The result is in accordance with the general law relating to illegality. See Scott v. Brown, [1892] 2 Q. B. 724; Clark v. Hagar, 22 S. C. R. 510; Gedge v. Royal Exchange Assurance Cor-