

The Ontario Weekly Notes

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TORONTO, OCTOBER 19, 1910.

No. 4.

HIGH COURT OF JUSTICE.

MIDDLETON, J.

OCTOBER 7TH, 1910.

*COLVILLE v. SMALL.

Champerty—Action by Assignee-trustee—Assignment of Contract—Provision for Division of Proceeds—Absence of Right of Indemnity against Assignors—R. S. O. 1897 ch. 327—Invalid Contract—Illegality—Public Policy—Dismissal of Action.

Motion by the defendant, in an action by an assignee of the contract sued on, for the summary determination of the question whether the assignment to the plaintiff was champertous.

It was agreed at the hearing of the motion that the pleadings should be amended so as to raise the question, and that the point of law should be treated as raised and argued under Con. Rule 259 and upon a motion to stay the action or dismiss it, under Con. Rule 616, on the admissions made by the plaintiff in his examination for discovery, or for the same relief upon the same material by an appeal to the inherent jurisdiction of the Court.

J. L. Counsell, for the defendant.

W. M. McClemon, for the plaintiff.

MIDDLETON, J.:—The plaintiff's case, as stated in his examination and in an affidavit made explanatory of certain answers, is that his solicitor recommended him to the assignors as a collector who would take in charge the collection of the claim, and also asked him if he would do so. Thereafter the claim was assigned to him by document which authorises the assignee to sue and recover and out of the proceeds first to pay costs and then to divide the proceeds equally between the assignors and assignee.

* This case will be reported in the Ontario Law Reports.