

lute within the meaning of the Act, and not by way of charge only. The assignment was in these words: "Re Building Contract, South Lambeth Road. In consideration of money advanced from time to time we hereby charge the sum of £1,800, which will become due to us from John Robertson on the completion of the above buildings as security for the advances, and we hereby assign our interest in the above-mentioned sum until the money with added interest be repaid to you." Notice of this was given to Robertson. Wills, J., who tried the action gave judgment in favour of the plaintiff. The Court of Appeal (Smith, Chitty and Collins, L.JJ.) however took a different view of the matter, and held that although an absolute assignment by way of mortgage with a proviso for redemption express or implied is within the statute, as was determined in *Tancred v. Delagoa Bay* (1889) 23 Q.B.D. 239, yet that the document relied on in the present case was by way of charge, and therefore not within the Act. In arriving at this conclusion Chitty, L.J., takes occasion to disapprove of the decision in *Brice v. Bannister*, 3 Q.B.D. 569. He also expresses a doubt whether an absolute assignment of part of a debt would be within the statute, but on this point neither Smith nor Collins, L.JJ. express any opinion. The defect in the plaintiff's proceedings it was also held could not, after trial, be cured by the addition of the assignors as parties.

**COUNTER CLAIM**—CAUSE OF ACTION AGAINST PLAINTIFF BY DEFENDANT JOINTLY WITH ANOTHER PERSON—JOINDER OF PARTIES—ORD. XVI., R. 11, ORD. XXI., R. 11—(ONT. RULES 206, 248).

*Pender v. Taddei* (1898) 1 Q.B. 798, shows that there are limits to the right of pleading a counter claim. In this case the defendant set up a counter claim by himself and another person jointly, against the plaintiff; and he added the other person as a party defendant to the counter claim, but the Court of Appeal (Smith, Chitty, and Collins, L.JJ.) were unanimous that the Rules do not admit of such a counter claim being set up, and affirmed the order of the Judge at Chambers striking it out. Ord. xxi., r. 11 (Ont. Rule 248) was held not to authorize the adding as a defendant a party jointly interested with the defendant pleading the counter claim.