

RIDDELL, J.:—This is an appeal from the judgment of Mr. Justice Latchford, and it was strongly urged that the learned trial Judge, had in effect refused to follow *Lee v. Friedman*, 20 O.L.R. 49. If this were so it is plain that the judgment could not stand.

I do not think the contention well founded—the learned Judge does not purport to disregard (as of course he could not disregard) the judgment of the Divisional Court in that case, but declines to extend that decision and to apply it to the facts of the present case.

The facts in *Lee v. Friedman* were different—there the employees of a company were customers of a store-keeper who declined to give them credit until they had got the consent of the company to pay to the store-keeper out of the wages coming to them at the end of the month the amount of their purchases from the store-keeper. The company agreed and the arrangement was carried out for some time, when the company made default. The store-keeper (in an action in which others were joined as plaintiffs in respect of other claims also for wages) sued for the amount owed to him and obtained judgment, claiming specifically as assignee of wages due to labourers, etc.

The Divisional Court held (1) that the arrangement was an equitable assignment of a certain part of the wages; (2) that an assignee of wages stands in the shoes of his assignor and is entitled to the benefit of the statute 7 Edw. VII. ch. 34, sec. 94. I think both conclusions were good law.

No difficulty arises from the assignment of part of a claim where the assignment is equitable and not under the statute: *Smith v. Everett* (1792), 4 Br. Ch. C. 64; *Lett v. Morris* (1831), 4 Sim. 607; *Watson v. Duke of Wellington* (1830), 1 R. & M. 602, where Sir John Leach, M.R., says at p. 605: "In order to constitute an equitable assignment, there must be an engagement to pay out of the particular fund." See also *Marton v. Naylor* (1841), 1 Hue, N.Y. 583 and cases cited. In *Shaw v. Moss* (1908), 25 Times L.R. 190, an assignment of 10% of salary and moneys to accrue due was supported as an equitable assignment.

I do not enter into the many curious and difficult questions arising out of the precise wording of the statute. The cases range from *Brice v. Bannister* (1878), 3 Q.B.D. 569 (C.A.) or before, to *Foster v. Baker*, [1910] 2 K.B. 636 (C.A.) or after.

In *Lee v. Friedman* it was indicated that the result would (or might) be different "under a slightly different state of