

SECTION 26 (e).—DEBTS AND CHOSES IN ACTION ARISING OUT OF CONTRACT ASSIGNABLE AT LAW.

Quaere, whether the section does not prevent the application of the rule in *Dearle v. Hall*, 3 Russ 1; *Fraser v. Imperial Bank*, 23 W.L.R. 445.

Waterloo Mfg. Co. v. Kirk, 19 W.L.R. 344.

A right of action for deceit on the sale of a business is not assignable under this section, *McGregor v. Campbell*, 19 M.R. 38.

SECTION 26 (f).—ASSIGNMENTS SUBJECT TO DEFENCE AND SET OFF EXISTING AS BETWEEN DEBTOR AND ASSIGNOR.

This section does not apply to a defence which could only be pleaded by way of counterclaim, *Cummings v. Johnson*, 23 M.R. 740, 23 W.L.R. 144.

Damages arising out of breach of a contract assigned may be set off against a claim under the contract, *ibid.* and see rules 308 and notes.

Seemle if a defendant is in a position to repudiate his contract because of his vendor's fraud he might set up the fraud by way of defence even as against a bona fide assignee, *ibid.* A counterclaim by a defendant for unliquidated damages arising out of a wholly independent cause of action in no way connected with the claim assigned is not a defence or set off within this section, *McManus v. Wilson*, 8 W.L.R. 106.

SECTION 26 (m).—STIPULATIONS AS TO TIME.

Considered *Barlow v. Williams*, 4 W.L.R. 233.

SECTION 26 (o).—MANDAMUS, INJUNCTION, RECEIVERS.

Act of 1902 Sec. 39 (o) Similar. R.S.O. 1897, Cap. 51, s. 58, ss. 9, similar, now in Ontario Judicature Act 3-4 Geo. V., Cap. 19, as Sec. 17.

Mandamus. Three kinds.

1. Old original High Prerogative Writ (still preserved) see Rule 876, *Holmested*, p. 77, but in the form of an Order, (see quaere *Frankel v. City of Winnipeg*, 23 M.R. 296).
2. Under the K. B. Act s. 26 ss. (o) (Rules 872-873).