good discharge for the same without the concurrence of the assignor:" R.S.O. ch. 51, sec. 58(5).

Now I think that the law has been made plain since the Judicature Act (which is the same in England and Ontario on this head of assignments) that not every "chose in action" is contemplated or covered by the words of the statute, and also that when the contract has not been or cannot be (as in this case) assigned, . . . when a breach of contract has occurred in respect to which the original party to the contract could sue for damages, he can not assign these damages, or a claim to these damages, so as to enable the assignee to sue in his own name. That was so laid down in the case cited of May v. Lane, 64 L.J. Q.B. 236, as explained in the later case of Torkington v. Magee, [1902] 2 K.B. 427 at pp. 433-4. (This case was reversed on the facts, in appeal: [1903] 1 K.B. 644.)

The objections in law to the maintenance of this action are therefore in my opinion two-fold: the contract itself is inherently of a non-assignable character, and (secondly) the possible damages, separated by means of the assignment, are not susceptible of being enforced in the Court by the assignee in his own name.

The appeal is dismissed with costs.

LATCHFORD and MIDDLETON, JJ., concurred.

---

DIVISIONAL COURT. JUNE 9TH, 1911.

## DAVY v. FOLEY.

*Water and Water Courses—Adjoining Proprietors of Pulp Mills—Description—Tail Race—Cross Wall—Obstruction of Flow—Easement—Damages.*

Appeal by the plaintiff from the judgment of BRITTON, J., ante 1028.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

M. K. Cowan, K.C., for the plaintiff.

W. M. German, K.C., for the defendants.

MIDDLETON, J.:—The two mills were owned by Keefer. When Keefer sold the cotton factory it was described as the