

that the action must be brought in the name of the assignee, and, per Cozens-Hardy, L.J., that the plaintiff had no right of action. It must be held to be an "absolute assignment" and "not purporting to be by way of charge only," within sec. 58, sub-sec. 5, of the Judicature Act. The British America Co. had written notice of it on 9th May, 1908. Not having set it up as a defence before the trial, that company, if succeeding only upon that ground, should not get their costs. Whatever might have been the position if the Northern Crown Bank were not before the Court, that is now changed. In the recent case of *Thompson v. Equity Fire Insurance Co.*, 12 O. W. R. 373, 17 O. L. R. 214, where also the insured brought action after assigning to a bank, the bank were allowed to be added as plaintiffs ab initio, although the time for the bank to bring a new action had expired, and it was held that the plaintiffs had an interest in the insurance, and that the actions, therefore, were not nullities, but at the utmost defectively constituted. It does not appear here that the bank were asked or refused before the action to bring or join in it, but they have since refused to join, although now submitting to be dealt with by the Court as defendants. Had they taken that attitude of refusal before action, the plaintiffs would undoubtedly have had the right to make them co-defendants. Having now the right to maintain the original action if the bank were added as co-plaintiffs, and being refused the bank's consent thereto, the plaintiffs should not be in a worse position, aside from the question of costs, to go on with the action, than they were in to bring it originally. I cannot give effect to the defendants' contention that the action should be dismissed, all parties interested being now before the Court, and the bank being added practically as soon as the objection to their absence from the record appears or is raised.

Then as to the question of costs. As already mentioned, the defendants are entitled to the benefit of their pleas of the insufficiency of the proofs of the claims and the prematurity of the actions, so far as the costs are affected. It therefore becomes necessary to consider the validity of those pleas. The action was commenced on 10th June, 1908. Under statutory condition No. 17, the loss does not become payable till 60 days after completion of proofs of loss. What proofs had been furnished 60 days previously, i.e., on or before 11th April?