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MAINTENANCE AND CHAMPERTY.

In the recent case of *Colville v. Small*, 22 O.L.R. 33, Mr. Justice Middleton has determined that where a man takes an assignment of a debt subject to an agreement that he is to sue for its recovery and divide the amount recovered between himself and the assignor that is a champertous agreement and void and that the action cannot be maintained.

Such a transaction would be a champertous bargain and void at common law because at common law choses in action were not assignable; an assignment, therefore, such as was in question in *Colville v. Small* would have no legal operation whatever at common law, and, notwithstanding the assignment, the action to recover the thing assigned would have had to be brought in the name of the assignor, and if that action were brought by the assignee in the assignor's name, even with the latter's consent, he would have no legal right to maintain it, and his doing so would be "maintenance." The common law required every suitor to prosecute and maintain his own suit and regarded any third person carrying on suits in the name of others as committing an unlawful act which was called "maintenance" which was an indictable offence at common law: see *Alabaster v. Harness* (1894), 2 Q.B. 297; (1895), 1 Q.B. 639; 70 L.T. 375, and if in addition to maintaining the action he bargained for the proceeds, or any part of the proceeds of the litigation, that was called "champerty" and was also illegal and a criminal offence: *Meloche v. Deguire*, 34 S.C.R. 29.

But it was of the essence of the common law offence of maintenance, that the action maintained should be the action of some other person than that of the maintainer. No one could be guilty of "maintenance" in respect of an action brought in his own name and at his own cost. The Judicature Act now permits