

HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

JUNE 7TH, 1911.

COHEN v. WEBBER.

Contract—Assignability—Contract for Personal Services as Singer—Attempted Severance of Damages from Contract—Chose in Action—Judicature Act, sec. 58(5).

Appeal by the plaintiff from the judgment of the County Court of York of the 15th March, 1911, in an action by the plaintiff personally and as assignee of others, to recover \$150 alleged to be due under contracts with the plaintiff and his assignors to sing for the defendants, who are the president and cantor respectively of the Goll Zadok Congregation at Toronto.

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

J. MacGregor, for the plaintiff.

H. C. Macdonald, for the defendants.

BOYD, C.:—In *Tolhurst v. Associated Portland Cement Manufacturers*, [1903] A.C. 424, Lindley, L.J., says as to the Judicature Act, 1873, sec. 25, clause 6: "It has not made contracts assignable which were not assignable in equity before, but it has enabled assigns of assignable contracts to sue upon them in their own names without joining the assignor."

The contract with the plaintiff in this case was for personal services as the singer in a choir, and was in its nature not assignable: *Kemp v. Baerselman*, [1906] 2 K.B. 604. Of like kind are all the other contracts made by the defendants with Gordon, Jacobson, Geld, etc., for services to be performed as singers. The contracts not being assignable, what has been assigned to the plaintiff by the other singers are their several claims to be paid damages for alleged breach of the several contracts.

In other words the right to unliquidated damages is attempted to be severed from the contracts and turned over to the plaintiff in order that he may in his own name sue for the contracted amounts. It is only by virtue of the provisions of the Judicature Act that this can be successfully presented in the Courts, that, "an absolute assignment of any debt or other legal chose in action . . . shall be effectual in law . . . to pass and transfer the legal right to such debt or chose in action . . . and the power to give a