

on their behalf, and that the deponent had thought, up to that time, that the administrator had a sufficient status to maintain the claim to set aside the assignment as a fraud on creditors, but now believed it was necessary that creditors should be added as plaintiffs; and upon the consent in writing of certain creditors to their being so added.

*Held*, that the administrator was a necessary party to the action so commenced; if it was intended to join him as a plaintiff for the purpose of proceeding with a new action, he was improperly added as a plaintiff; but it must be assumed that he was properly added, and, if so, he was added only as a party to the "action commenced."

The allegation in the statement of claim that the deceased was insolvent and the assignment a fraud on his creditors was immaterial and irrelevant to the "action commenced," and was not maintainable by either of the plaintiffs, neither being a creditor.

The plaintiffs sought by the application to introduce new plaintiffs not necessary "for the determination of the real matters in dispute," which words, in Rule 445, mean the real matter in dispute in the "action commenced," and a new action altogether distinct from the "action commenced," and one which the plaintiffs to the "action commenced" could not maintain.

And therefore the application should be dismissed.

Worrell, Q.C., for the plaintiffs.

C. Millar for the defendant Bingham.

Q.B. Div'l Court.]

[March 3.

CAIRNS vs. AIRTH.

*Writ of summons—Extending time for service—Rule 238 (a)—Ex parte order—Motion to set aside—Time—Rule 536—Material on motion—Merits—Statute of Limitations.*

An action upon a promissory note payable on the 4th November, 1885, was begun on the 31st October, 1891. The writ of summons not having been served, an order was made on the 28th October, 1892, on the *ex parte* application of the plaintiff, under Rule 238 (a), that service should be good if made within twelve months. The writ, together with this order, and an order of revivor—the original plaintiff having died in the meantime—was served on one of the defendants on the 2nd August, 1893. On the 12th September, 1893, the defendant, who had been served, moved before the local judge who made the order of 28th October, 1892, to set it aside, which he refused to do.

*Held*, reversing the decision of GALT, C.J., in Chambers, that the local judge was right; for the time for moving under Rule 536 had expired, and had not been extended; and certain correspondence relied on as showing an agreement to extend the time had not that effect.

The validity of the *ex parte* order did not depend solely upon whether the affidavit upon which it was made was sufficient to support it; the motion to set it aside was a substantive motion supported by affidavits; and the plaintiff was at liberty to answer the motion by showing new matter in support of the original order.