

CARTWRIGHT, MASTER.

MARCH 29TH, 1909.

CHAMBERS.

EMPIRE CREAM SEPARATOR CO. v. PETTYPIECE.

*Venue—Motion to Change—County Court Action—Contract—
Representations of Agent — Convenience.*

Motion by defendant to change venue and transfer action from the County Court of York to the County Court of Essex.

H. M. Mowat, K.C., for defendant.

D. G. Galbraith, for plaintiffs.

THE MASTER:—The action is on a written contract, of which the execution is admitted. The defence is that it was signed on the representations and at the request of plaintiffs' travelling agent. The contract, however, expressly states that the plaintiffs will not be responsible for any variation of the same by any such verbal representations, and the orders also state that travelling agents are not authorised to make any such arrangements whatever.

In a case of *Wellington v. Fraser*, 12 O. W. R. 1141, a similar defence was set up, and on that account I thought the motion should succeed. But on appeal, 12 O. W. R. 1171, this order was reversed. No reasons are given there, but I was informed by counsel for the plaintiff that it was on the ground that under a similar contract no such defence was open to the defendant.

The motion must, therefore, be dismissed with costs to the plaintiffs in the cause. If the defendant has any remedy, it must be against the travelling agent of the plaintiffs. These are not cases like *Dominion Bank v. Crump*, 3 O. W. R. 58, where such an arrangement was within the scope of the agent's authority.