

made to support the motion on the grounds set out in the notice, nor was leave asked to amend the notice.

Con. Rule 789 provides: "Every notice of motion or appeal to a Divisional Court shall set out the grounds of the motion or appeal." "The Court . . . may, at any time, amend any defect or error in any proceeding; and all such amendments may be made as are necessary for the advancement of justice, determining the real matter in dispute . . . ." Con. Rule 312. An amendment is not allowed in every case—and, while it is as of course in the ordinary case, it will not be made simply because a mistake has been made—and still less where no mistake has been made, but it is supposed that an opportunity will be afforded to hang an argument upon a different peg if the amendment be made.

From the notorious course of litigation in connection with this land, which is rapidly becoming and has indeed already become a scandal, it is perfectly plain that a number of the descendants of David Kennedy are acting together and in concert harmoniously to a common end, i.e., to embarrass the executor in his administration of the estate. And nothing we could do by allowing or directing an amendment to the present notice of motion, and giving judgment upon the new points, would be at all of advantage in putting an end to the litigation.

I, therefore, think we should simply dispose of the appeal upon the grounds set out in the notice of motion—and that the appeal should be dismissed with costs.

I have seen no reason to change the view formed during the argument, that, even if an amendment were allowed, the appeal could not succeed.

FALCONBRIDGE, C.J.:—I agree in dismissing the appeal with costs.

BRITTON, J.:—I cannot usefully add anything to what my brother Riddell has written. I agree in the result—that the appeal should be dismissed with costs.

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MIDDLETON, J., IN CHAMBERS.

MAY 7TH, 1912.

BROOM v. TOWN OF TORONTO JUNCTION.

*Parties—Proposed Addition of Defendant—Improper Joinder—  
Limitation of Actions.*

Appeal by the plaintiff from the order of the Master in Chambers, ante 1158, refusing to add A. J. Anderson as a party defendant.