

interests of the owners of Mount St. Joseph (an institution situated outside the limits of the city).

The by-law must be quashed with costs, including costs of the motion, to be paid by the municipal corporation.

ROSE, J.

MAY 10TH, 1919.

LAING v. TORONTO GENERAL TRUSTS CORPORATION.

*Parties—Action by Settlor against Trustees to Set aside Trust-deed—Application by Trustees for Addition as Defendant of Representative of Unborn Issue—Rule 134—Appointment of Representative—Rule 77.*

This was an action by a settlor to set aside a trust-deed. The trustees, who were the sole defendants, moved to add as a defendant some one to represent the unborn issue of the plaintiff, who, under the trust-deed, would take the property after the death of the settlor, in default of appointment by the settlor.

The motion was heard in the Weekly Court, Toronto.

E. G. Long, for the defendants.

William Proudfoot, K.C., for the plaintiff.

ROSE, J., in a written judgment, said that the authorities were not uniform as to the cases in which a defendant ought to be added against the will of the plaintiff. It seemed to be the general rule that the plaintiff ought not to be compelled to sue any one whom he did not want to sue, and that if, after it has been pointed out to him that his action as framed may be defective for want of parties, he chooses to go on and run the risk of failure upon that ground, he ought to be allowed to do so; but, notwithstanding that general rule, the Court does frequently, at the instance of a defendant, exercise the power, given by Rule 134, to add as a defendant a person whose presence is thought to be necessary in order to enable the Court effectually and completely to adjudicate upon the questions involved in the action. See the statement by Jessel, M.R., in *Werderman v. Société Générale d'Electricité* (1881), 19 Ch. D. 246, at p. 251.

In this particular case it did not seem fair to the defendants that, even if technically the action was properly constituted, the defendants should be compelled to assume alone the burden of supporting the trust-instrument; it seemed reasonably sure that, at some stage of the action, the order for which the defendants