

The interest of the other members would be to cast upon Seagram the responsibility for any tortious act committed by or for him, and he would not be a fitting representative to defend them. Of course, if Seagram's act was not tortious then this action will fail, and the class will need no protection.

If the plaintiff is correct in thinking that he has been injured by a body of tort-feasors, as he swears, he must either content himself by suing those whom he selects from this body or must give each an opportunity of defending himself.

No case has gone so far as to justify an order such as sought, where the action is really a common law action for trespass. *Temperton v. Russell*, [1893] 1 Q. B. 435, has been much qualified by what was said in *Bedford v. Ellis* [1901] A. C. 1; but it is as yet an unheard-of thing that a pecuniary verdict should pass against a person without his being in fact sued.

Motion dismissed, with costs to defendant in any event.

MASTER IN CHAMBERS.

NOVEMBER 23RD, 1912.

FUMERTON v. RICHARDSON.

4 O. W. N. 393.

*Venue — Motion to Change Milton to Whitby — Delay in Moving — Balance of Convenience—Allegation that Plaintiffs' Counsel Unduly influential in County of Trial.*

MASTER-IN-CHAMBERS refused to grant an order to change the venue where a clear case of preponderating convenience was not made out, and, where the order would have had the effect of delaying the trial, and defendant had been dilatory in moving, and held that an allegation that plaintiff's counsel had such influence in the county where the trial was to take place, as to preclude the defendant from obtaining a fair trial could not be urged in support of the motion.

Motion by defendants other than defendant Gormley, to change the venue from Milton to Whitby, on the usual ground of convenience. The action was brought by a resident of Sask., claiming damages against defendants for alleged deceit and breach of warranty on a sale by defendant Gormley, alleged to have been the agent of his co-defendants, of a horse to plaintiff in Sask. Milton was named as the place of trial in the statement of claim, delivered on 19th October. Joinder