

MASTER-IN-CHAMBERS.

JUNE 21ST, 1913.

ROGERS v. WAHNPITAE POWER CO.

ROGERS v. IMPERIAL PORTLAND CEMENT CO.

4 O. W. N. 1489.

*Trial—Motion to have Actions Tried together—Leave to Serve Jury Notice—Identity of Issue — Question as to—Application to Trial Judge.*

MASTER-IN-CHAMBERS refused to make an order requiring two actions to be tried together where the issues were similar but not necessarily identical, but gave plaintiffs leave to serve a jury notice in one of such actions in order that the cases might be set down together and an application made to the trial Judge.

Motion for an order requiring two actions to be tried together.

M. Lockhart Gordon, for plaintiffs.

J. T. White, for defendant in first action.

H. S. White, for defendant in second action.

CARTWRIGHT, K.C., MASTER:—The first action is brought by the plaintiffs to recover the price of cement sold by them to defendant. This claim is resisted on the ground of the defective quality of the cement, and defendant company counterclaims for damages arising from such defect.

This cement is said by plaintiffs to be a part of what was bought by them from the Imperial Portland Co. — against whom the plaintiffs have brought action for the price of bags supplied to that company. It refuses to pay and sets off the price of the cement which plaintiffs have refused to pay until the question has been determined of its quality and sufficiency for the purposes for which it was bought by the Wahnapitae Co.

The plaintiffs allege that the main question in each action is as to the quality of the cement and make this motion.

A jury notice has been given by the defendant in the first action. The place of trial in each is Toronto. This at once creates a difficulty as to making any order. Either the jury notice already served must be struck out or the plaintiffs must be given leave to serve a jury notice in the second action—which I have power to grant.

Even then it does not seem possible to make any order of greater effect than will be gained by plaintiffs setting the