

HON. MR. JUSTICE MIDDLETON. NOVEMBER 21ST, 1912.

CHAMBERS.

SCULLY v. ONTARIO JOCKEY CLUB.

4 O. W. N. 379.

*Parties—Action of Trespass and Assault—Ejection from Race-meeting—Motion for Representation—Con. Rules 200 and 201—Tort-feasors—No Community of Interest—Plaintiff to Select Defendants.*

MIDDLETON, J., in an action of trespass and assault for ejection from a race-meeting, refused to appoint the President of an unincorporated voluntary association to represent all the members thereof as defendants, on the ground that there could be no community of interest under Con. Rules 200 or 201 among various alleged tort-feasors.

The action was brought by a "bookmaker," who alleges that he was ejected from the grounds of the Hamilton Jockey Club by a private detective employed by the Canadian Racing Association; which is a voluntary association that had undertaken to police the grounds of the club during a race meeting. The plaintiff charged that this ejecting was a trespass and assault, and he claimed damages for it.

J. P. McGregor, for the plaintiff.

Ritchie, for the defendants.

Motion for an order under Rule 201, appointing the defendant Seagram to represent all the members of the Canadian Racing Association.

HON. MR. JUSTICE MIDDLETON:—I think the motion is entirely misconceived. Rule 201 can only be invoked where the right of the class to be represented depends upon the construction of an instrument. It is probable that the application intended to refer to Rule 200, which sanctions the making of an order authorising any party to defend an action on behalf of all "numerous parties having the same interest."

It is quite impossible to say that all the members of the Canadian Racing Association have the same interest. The plaintiff seeks to make them responsible for what he charges to be a tortious act committed at the instance of Seagram.