

It is plain that both Farrell and the company are liable to the plaintiffs for the moneys received if fraud can be established. Bowstead, 4th ed., 332. So far as this branch of the case is concerned, they are each undoubtedly proper parties to the action against them jointly.

So far as release is claimed against the defendant company, beyond that which can be claimed against Farrell, this is cognate to the action against them jointly. This distinguishes the case from the class of cases of which *Collins v. North British*, [1894] 3 Ch. 228, may be regarded as a type. There it was sought to add a totally independent and quite distinct claim against the foreign defendant. This is plainly not admissible; but in that case, as in all others, it was said that an additional claim cognate to the primary cause of action may be added.

At present I am inclined to think that the case might be brought under one of the other heads mentioned in Rule 25; but it is not necessary to determine this point in these cases.

The motion must be refused, with costs to the plaintiffs, in any event.

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SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

MARCH 9TH, 1914.

CLARK v. ROBINET.

6 O. W. N. 66.

*Charge on Land—Agreement—Duration—Payment of Claims—Discharge of Land—Payment into Court—Contingent Agreement—Failure of Same—Appeal—Allowance of Dismissal of Action.*

Action for a declaration that the plaintiff's farm was free from any claim or claims by the defendants or either of them under what was called a "syndicate agreement" or otherwise. No time was fixed for the duration of the agreement, which was made in September, 1909.

LENNOX, J. (25 O. W. R. 76) *held*, that on return of money paid him plaintiff was entitled to relief asked and costs of action, he having duly tendered the money to defendants.

SUP. CT. ONT. (1st App. Div.) *held*, that the syndicate agreement was not at an end and the action must be dismissed with costs. Appeal allowed with costs.

Appeal by the defendants from a judgment of HON. MR. JUSTICE LENNOX, dated 13th October, 1913, directed to be entered after the trial of the action without a jury at Sandwich, on the 28th and 29th May, 1913.