

actions impeached, and by his conduct had estopped himself from complaining. The original plaintiff moved, after the defence was filed, for an order adding Eaton as a co-plaintiff, and the order appealed against was made upon that motion.

H. J. Macdonald, for the defendants.

J. H. Fraser, for the original plaintiff.

Erichsen Brown, for Eaton.

MULOCK, C.J.Ex. (after stating the facts):—The plaintiff Crawford in support of the order invokes Rule 134. That Rule is substantially a consolidation of the former Con. Rule 313 and of clause 2 of Con. Rule 206, and is to the same effect as the English (1883) Order XVI., Rules 2 and 11. . . .

One of the questions involved in this action is, whether the individual defendants have been guilty of any breach of trust of which the plaintiff Crawford has the right to complain. Is Eaton's presence necessary in order to enable the Court to adjudicate upon that question? I think not. . . .

[Reference to *Walcott v. Lyons* (1885), 29 Ch. D. 584, 587; *Ayscough v. Bullar* (1889), 41 Ch. D. 341; *Attorney-General v. Pontypridd Waterworks Co.*, [1908] 1 Ch. 388, 399; *Dillon v. Township of Raleigh* (1886), 13 A.R. 53; *Burt v. British Nation Life Assurance Association* (1859), 4 De G. & J. 158; *Colville v. Small* (1910), 22 O.L.R. 426, 429.]

According to the pleadings, this is not the case where one who has a cause of action brings a suit in which another person who is a necessary co-plaintiff has not been so joined. In such case the suit is merely defective, and the Court may, under proper circumstances, add as plaintiff the one who should have been originally so joined, but here, if the plaintiff has a cause of action, he is entitled to maintain it without the presence of Eaton as co-plaintiff. If the defence is bad, Eaton's presence as a co-plaintiff is not necessary; if it is good, then the plaintiff has no cause of action. Thus it cannot be said that Eaton ought to have been joined as a co-plaintiff when the action was commenced or that his presence is necessary in order to enable the Court effectually to deal with all the questions involved in the action. Thus the order cannot be upheld under the first parts of the Rule. Nor can the order be upheld on the ground that the action has "through a bonâ fide mistake been commenced in the name of the wrong person as plaintiff," or that "it is doubtful whether it has been commenced in the name of the right plaintiff." . . .