

of 7 of the 11 co-makers to be joined as plaintiffs, and undertook to procure the consent of the other 4 within 2 weeks, and upon that the trial proceeded as if the amendment had been made, the trial Judge saying that, as the case was being tried without a jury, if there was any witness for the defence not present, arrangements could be made for the taking of his evidence before the case should be finally dealt with. Defendant was called as a witness. He connected Drion with the whole transaction and shewed that if there was any possible defence as to the other plaintiffs, Drion could prove it. At the close of the evidence for the defence, counsel for defendant told the Court that he wished to have the opportunity of calling Drion, but the trial Judge said that defendant should have had Drion there, and declined to adjourn the case for his evidence. Judgment was given for plaintiffs requiring defendant to pay off and indemnify plaintiffs against the note.]

If Drion's admission is to be taken for any purpose in favour of the other plaintiffs, it should be only what he says as a witness—not what others may say that Drion said.

Drion is now made a party plaintiff, and even as a "stool pigeon" for defendant—if the evidence goes so far as to shew that—he is not necessarily upon the evidence entitled to succeed against defendant—yet he is made to succeed, equally with the other plaintiffs.

It is not, as it appears to me at this stage of the case, a question of whether defendant was negligent or not in not being ready for any such amendment as was made at the trial, and in not having Drion at the trial as a witness. It is that Drion was a necessary and material witness for the proper trial of this action; that counsel were told in the early stage of the trial that if there was any witness for the defence not present, arrangements could afterwards be made for the taking of that evidence before the case should be finally dealt with; and it was upon that understanding by counsel for defendant that he called defendant and the one witness he had present.

I think there should be a new trial with costs to abide the event. Plaintiffs should be at liberty to add the holders of the note as parties defendants.

FALCONBRIDGE, C.J.—I concur.

IDINGTON, J., dissented, giving reasons in writing.