

port their claim. Moreover, all information which the defendant is entitled to have can be obtained upon discovery.

I think that the appeal should be allowed, and that the motion should be dismissed, both with costs.

MIDDLETON, J., IN CHAMBERS.

JANUARY 19TH, 1914.

WINNIFRITH v. FINKELMAN.

*Parties—Motion by Defendants to Compel the Addition of New Plaintiffs—Contract—Principal and Agent—Counterclaim.*

An appeal by the defendants from an order of the Master in Chambers refusing to add as plaintiffs the National Trust Company and the Toronto Railway Company.

Grayson Smith, for the defendants.

Frank McCarthy, for the plaintiff.

MIDDLETON, J.:—In the form in which this motion is launched, it is quite impossible for it to succeed. A plaintiff cannot be added against his will. The fundamental difficulty in the way of the appellants is an entire misconception of the situation.

A contract was made between the plaintiff and one Vandewater, by which Vandewater agreed to sell to the plaintiff certain property for \$20,850. At Vandewater's request, \$1,000, part of this consideration, was paid to the defendants. Vandewater refused to give a deed, yet the defendants refuse to give up the money; and this action is brought.

Upon the evidence, there is no doubt that in entering into the contract the plaintiff was acting as agent for the National Trust Company or its "client." Mr. Rundle, manager of the trust company, in effect so states in his letter of the 28th November, But, where the contract is entered into with an agent in his own name, he has a right to sue upon it. The fact that he is a mere trustee does not make him a nominal plaintiff, in any real sense of that word. None of the cases cited in any way support the appellants' contention.

Where, as in *Murray v. Wurtele*, 19 P.R. 288, the plaintiff, pending litigation, parts with his entire interest in the subject-matter of the litigation to another, it is plainly contrary to the practice of the Court to allow that other to continue the litigation