

FEBRUARY 20TH, 1905.

DIVISIONAL COURT.

ARTHUR v. FAWCETT.

Trial—Adding Parties—Amendment—Trial Proceeding without Adjournment—Witness for Defendant not Present—Refusal to Adjourn—New Trial.

Appeal by defendant from judgment of MEREDITH, C.J., at North Bay, in favour of plaintiffs, in an action on behalf of themselves and others, in which they alleged that they had been fraudulently induced to sign a paper which they never supposed was a promissory note, but which turned out to be a promissory note for \$1,500, signed by them and 12 others, and made payable to defendant, who had indorsed it to the Traders Bank of Canada at North Bay, and claimed delivery up and cancellation of the note.

The appeal was heard by FALCONBRIDGE, C.J., BRITTON, J., IDINGTON, J.

E. F. B. Johnston, K.C., for defendant.

W. M. Boulton, for plaintiffs.

BRITTON, J.—It may be that any further litigation in this case will not only be of no advantage to defendant, but will be to his positive loss in the added costs. I do not go into any careful analysis of the evidence given by defendant himself, to see if, upon his own shewing, he must necessarily fail, and that not only the original plaintiffs, but the added plaintiffs, including one Drion, are entitled to succeed, for I am of opinion that, by reason of what took place at the trial, defendant is, *ex debito justitiæ*, entitled to a new trial, or is at least entitled to an opportunity to produce Drion and have his evidence heard. . . .

Defendant pleaded that 11 others besides plaintiffs had signed the note, and that they had not consented to the bringing of this action. This plea may not have been good, but plaintiffs made no application to strike it out, and made no objection to it before or at the trial.

The trial Judge thought the others necessary parties to the action, and made an order that they be joined as plaintiffs upon their written consent being first obtained to be so joined.

[The judgment then set forth what took place at the trial. It appeared that counsel for plaintiffs produced the consent