

# The Ontario Weekly Notes

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## APPELLATE DIVISION.

FEBRUARY 16TH, 1915.

BARISINO v. CURTIS & HARVEY (CANADA) LIMITED.

*Parties—Uncertainty as to Identity of Plaintiff—Misnomer—Person Acknowledging himself to be Plaintiff and Submitting to Examination for Discovery — Estoppel — Order Amending Style of Cause by Changing Name—Jurisdiction to Set aside Order—Rule 217—Order Right on Merits—Restoration on Appeal.*

Appeal by the defendants from an order of the Judge of the District Court of the District of Timiskaming.

This action was begun in that District Court in the name of "Barisino" as plaintiff. There being no one of that name, one Bardessano, who had a claim against the defendants, was served with an appointment for examination for discovery, at the instance of the defendants. He appeared, with a solicitor, before the examiner, and swore that he was the plaintiff, gave particulars of his claim, etc. The action proceeded on that basis, and at the trial evidence was given on behalf of the plaintiff. Judgment went for the defendants, who taxed their costs. Upon the Sheriff attempting to seize the goods of Bardessano, on a writ of fieri facias for these costs, Bardessano denied that he was the plaintiff. The defendants applied ex parte to the District Court Judge, who made an order on the 26th October, 1914, directing that the judgment and writ of fieri facias should be amended by inserting in the style of cause, as plaintiff, the name of Bardessano in place of Barisino. Bardessano moved before the District Court Judge to set aside the order of the 26th October, and on the 21st December, 1914, the Judge made an order setting aside the said order of the 26th October.