

this form, even when the solicitor acts for the litigant. But, according to the scheme of the Rules, it is from the solicitor whose name is indorsed in the process that the information is to be derived as to the occupation, place of abode (and even street and house number) of the plaintiff in cases where the defendant is at a loss to know his opponent or suspects his absence from the country: see Rule 143. . . . The plaintiffs have a shifting residence, and, as it appears that all are within the limits of the district, I do not think the action should be stayed till more precise local information is given.

I allow the appeal with costs in cause to plaintiffs.

MARCH 6TH, 1903.

DIVISIONAL COURT.

LAWRENCE v. TOWN OF OWEN SOUND.

Water and Watercourses — Municipal Corporation — Damming Stream without By-law—Finding of Liability—Reference as to Damages—Costs up to Hearing—Trespass to land.

Appeal by defendants from judgment of FERGUSON, J. (1 O. W. R. 559) on the question of costs.

G. F. Shepley, K.C., for defendants.

J. H. Moss, for plaintiff.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) was delivered by

STREET, J.—The action is for damming a stream and thereby diverting its waters upon plaintiff's land and causing him damage. The fact of the diversion of the stream and of damage to plaintiff is shewn, and, by consent, the trial Judge having found that plaintiff was entitled to proceed by action and not for compensation under the Municipal Act, the question of damages was referred to a County Judge. The defendants had paid \$50 into Court by way of amends, and plaintiff had refused to accept the amount in satisfaction of his claim. Defendants contended that the trial Judge, under sec. 470 of the Municipal Act, was bound to reserve the question of costs until the result of the reference should be known, instead of giving plaintiff costs of the action to trial at once. The case does not fall within sec. 470. That section applies only to actions brought to recover damages for alleged negligence on the part of the municipality. Here the municipality acted without a by-law. They had, therefore, no right to do the act complained of, and it was a trespass. It is not for doing a rightful act negligently that the action is brought, but for doing a wrongful act. Appeal dismissed with costs.