

HON. MR. JUSTICE MIDDLETON.

JANUARY 19TH, 1914.

WINNIFRITH v. FINKELMAN.

5 O. W. N. 781.

Parties—Addition of Unwilling Plaintiffs Sought—Contract by Agent in His Own Name—Undisclosed Principal—Right of Agent to Sue as Real Plaintiff—Counterclaim—Right to Add Principal in—Dismissal of Motion.

MIDDLETON, J., held, that a plaintiff cannot be added in an action against his will, and that an agent with whom a contract is made in his own name is entitled to sue upon it, and is a real not a nominal plaintiff.

Murray v. Wurtele, 19 P. R. 288, distinguished.

Judgment of MASTER-IN-CHAMBERS, confirmed.

Appeal by the defendant against the order of the Master-in-Chambers refusing to add, as parties plaintiff, the National Trust Company and the Toronto Railway Co.

J. Grayson Smith, for the defendant.

F. McCarthy, for the plaintiff.

HON. MR. JUSTICE MIDDLETON:—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 applicant 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 refused 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 Co., or its "client." Mr. Rundle, manager of the Trust Co., 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 appellant's contention.

Where, as in *Murray v. Wurtele*, 19 P. R. 288, the plaintiff, pending litigation, parts with his entire interest in the