

of the jury as to the question in reference to contributory negligence, action dismissed with costs.

FALCONBRIDGE, C.J.

FEBRUARY 17TH, 1903.

TRIAL.

HARRINGTON v. SPRING CREEK CHEESE MFG. CO.

*Water and Watercourses—Right to Flow of Water—Artificial Waterway—Prescription—Interruption—Defence—Amendment.*

Action for a declaration that defendants have not acquired and do not possess as against plaintiff any right to the continued flow of water through an artificial waterway in the township of East Zorra, and that plaintiff is entitled to have it removed from his lands, and to have the waters flowing to his lands from a certain spring flow in their natural channel, and for an injunction and damages and other relief.

A. B. Aylesworth, K.C., and W. T. McMullen, Woodstock, for plaintiff.

E. D. Armour, K.C., and G. F. Mahon, Woodstock, for defendants.

FALCONBRIDGE, C.J., held that the merits were with defendants, who with their predecessors had enjoyed the rights now impugned for over 30 years, and, as they supposed, by express grant since 1878. There had been no interruption in the exercise of their supposed rights since their factory was built, about 1870, although plaintiff began complaining in 1895. Defendants should be allowed to amend the 6th paragraph of the defence, and defence as amended held to be established by the evidence and good in law. Action dismissed with costs.

BRITTON, J.

FEBRUARY 18th, 1903.

CHAMBERS.

CAVANAGH v. CASSIDY.

*Security for Costs—Residence of Plaintiff—Ordinary Residence Out of the Jurisdiction—Temporary Residence in Ontario.*

Appeal by plaintiff from order of Master in Chambers (ante 27) requiring plaintiff to give security for costs, on the ground that he is ordinarily resident out of the jurisdiction of the High Court of Justice for Ontario, and only temporarily resident within it.

S. B. Woods, for plaintiff.

J. E. Cook, for defendants.