

the allegation that the damage was caused by his dam; see Bullen & Leake, 2nd ed., p. 367, and also Foot v. Edwards, 3 Blatchford (Conn.) Circuit Reports 310; Gould on Waters, 3rd ed., pp. 720-1. Appeal allowed with costs and prohibition granted with costs.

F. G. Evans, Orillia, solicitor for plaintiff.

R. D. Gunn, Orillia, solicitor for defendants.

BRITTON, J.

MARCH 10TH, 1902.

CHAMBERS.

WEBLING v. FICK.

*Parties — Adding Plaintiffs — Consent — Verification by Affidavit — Identity of Names.*

Appeal from order of local Judge at Brantford adding F. Pritchard & Co. as parties plaintiffs.

Action for damages for breach of an agreement to sell and deliver certain apples. Upon the consent of Pritchard & Co. to their addition as plaintiffs being filed, it was found that the witness to that consent, which was executed in Liverpool, England, and not verified by affidavit of execution, bore the identically same name as the witness who signed as to the execution of the agreement in Brantford, Ontario, in respect of which the action was brought. The local Judge, however, made the order.

J. E. Jones, for defendant.

W. S. Brewster, K.C., for plaintiffs.

BRITTON, J.—The consent of Fred. Pritchard & Co. to having their names added as plaintiffs should be proved not necessarily by the subscribing witness, but by an affidavit satisfying me that the consent was really signed at Liverpool, as it purports to be. If the consent was forwarded for signature and returned in due course signed, and if the subscribing witness was in Liverpool on the 3rd January, 1902, that can be shewn. If shewn within one week, the appeal is to be dismissed and plaintiff allowed to add P. & Co. as plaintiffs. The plaintiff Webling to consent that the money deposited as security for costs shall stand as security for P. & Co., and without prejudice to defendant's applying for security for costs from P. & Co. Costs of appeal to be to