

dants. The action was tried before MEREDITH, C.J.C.P., and a jury; and, upon the findings of the jury, the action was dismissed.

The plaintiff appealed, and his appeal was heard by a Divisional Court of the Appellate Division on the 11th February, 1915, and was dismissed.

On the 16th February, 1915, the plaintiff served notice of a motion to reopen the hearing of the appeal and for a new trial, on the ground that the plaintiff had discovered since the trial and since the hearing of the appeal that the testimony given by a certain witness at the trial did not relate to the place where the plaintiff was when he received the injury, and that the plaintiff was taken by surprise at the trial, and upon other grounds.

In support of this motion the plaintiff proposed to examine three witnesses, with the view of reading their depositions at the hearing of the motion, and obtained from a local officer an appointment for the examination of the three witnesses.

Upon the application of the defendants, the appointment was set aside by an order of the Local Master at Lindsay.

The plaintiff appealed from the order of the Local Master, and the appeal came before BOYD, C., in Chambers, on the 12th March, 1915.

The learned Chancellor adjourned the appeal for hearing by the Divisional Court of the Appellate Division which should hear the motion to reopen the appeal and for a new trial.

On the 23rd March, 1915, the appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

W. Laidlaw, K.C., for the plaintiff, appellant.

C. A. Moss, for the defendants, respondents.

THE COURT, approving and following *Trethewey v. Trethewey* (1907), 10 O.W.R. 893, held that the appointment was improperly issued, no leave having been obtained from the Appellate Court.

A substantive application to the Court for leave was refused; and the main motion, to reopen the hearing and for a new trial, was also refused.

Costs were awarded to the defendants throughout.