

beth Witerbottom, and that said commission be an open commission under the circumstances alleged. This motion was supported by the affidavit of one of defendants' attorneys. The plaintiff filed a counter-affidavit.

Judgment was delivered on the 14th of December, 1914, granting an open commission, and Louis N. Singer, barrister, of Toronto, was appointed commissioner to take her evidence. The plaintiff filed an exception to the judgment as rendered, having previously declared that she did not intend to join in the case. The defendant was examined in Toronto, by her attorney of record, Mr. Weinfeld, the proceedings being *ex parte*.

When the case came up for trial in the Superior Court in the month of June, 1915, the plaintiff made a motion that the judgment granting the commission rogatoire be set aside and revoked and all the proceedings in connection with said commission rogatoire be rejected from the record. This motion was dismissed.

We are to revise these judgments before examining the other questions raised in the present case.

The commission was addressed to one commissioner. Plaintiff claim that the appointment of one commissioner was irregular and unauthorized.

Article 382 says: [Citation.]

It would seem by this article, that though the parties did not join in the commission, at least three commissioners should be chosen from the names given by the party who is asking the commission. The last part of this article seems to make this clear when it says it is addressed to the persons chosen by the parties who apply for it. Moreover this article says that it is only in the case of consent that the commission may be addressed to one