

judgment on the merits which will fairly and justly adjudicate upon the pretensions of the respective parties, owing to the irregularities which the record, at the present time, discloses;

“Considering that on the 14th of December 1914, an interlocutory judgment was herein rendered granting the defendants motion for the issue of an open commission to examine the female defendant in Toronto, which said commission issued in spite of the opposition of the plaintiff, who did not join therein, and that the examination of the said female defendant procured *ex parte* upon the said open commission;

“Considering that by law, an open commission could not then issue without the consent of plaintiff; arts. 385 and 385a, C. P.;

“Considering that on the 11th of June 1915, the plaintiff, by his attorney, moved to revise this judgment, the application being before the trial judge, which motion was dismissed;

“Considering that the plaintiff then applied to be allowed to cross-examine the female defendant who was present in Court at the time of the trial, said cross-examination to be made upon her statements before the open commission in Toronto, which application was also rejected;

“Considering that the said open commission has issued irregularly and illegally, and that the plaintiff is justified in asking to have the final judgment rendered against him dismissing the action, set aside, as well as to have the record sent back to the Superior Court, and the proceedings under the open commission set aside;

“Considering that there is error in the two interlocutory judgments of the 14th December 1914, and of the