

For the reasons given in the Collins case, and following the decisions there cited, I think the 6th paragraph sufficiently alleges a joint cause of action, and that the plaintiff cannot be required to elect if he chooses to run the risk of having his action dismissed at the trial as against one of the defendants.

The motion will be dismissed; costs in the cause.

CARTWRIGHT, MASTER.
ANGLIN, J.

NOVEMBER 1ST, 1907.
NOVEMBER 8TH, 1907.

CHAMBERS.

TRETHEWEY v. TRETHEWEY.

*Evidence — Motion to Divisional Court for New Trial —
Discovery of Fresh Evidence — Examination of Witnesses
on Pending Motion — Appointment for — Motion to Set
aside — Rules 491, 498.*

On 19th October defendant served notice of motion to a Divisional Court to set aside the judgment at the trial, and dismiss the action, or for a new trial, on the usual grounds, and, among others, on the ground of alleged discovery since the trial of material evidence which, if true, would defeat the action, in defendant's opinion.

In the notice it was stated that the motion would be supported by the examination of 5 named witnesses, as well as by the affidavit of the defendant filed.

In pursuance of this notice the defendant obtained an appointment from a special examiner for the examination of the 5 witnesses on 26th October, on the pending motion.

On 24th October plaintiff moved to set aside this appointment as irregular and unauthorized by the practice, because leave had not first been obtained from a Divisional Court, and that, in any case, the proposed evidence could not be received as shewing grounds for a new trial.

W. E. Middleton, for plaintiff.

R. McKay, for defendant.

THE MASTER:—The affidavit of defendant referred to in his notice of motion was not filed or made until 29th October.