

2. The second paragraph of article 356 C. P., which says that "If the witness can be produced at the trial, "he must be examined anew in the ordinary manner, "if it be required by either party", applies in the case of a party being examined on an open commission and being present in Court at the trial.

The judgment of the Superior Court, which is set aside, was rendered by Mr. Justice Demers, on June 24, 1915.

In an action in nullity of a will, an open commission to examine witnesses was granted and executed. The action was dismissed.

The question of law decided by the Court of Review relates only to the legality of the open commission issued.

The following judgment and notes explain sufficiently the facts of the case.

The text of the judgment is as follows:

"Considering that the present action has been instituted under article 893 C. C., which provides that the revocation of a will may be demanded if the legatee has hindered the revocation or modification of the will;

"Considering that the judgment *a quo* states that the will cannot be revoked as to the defendant Watter Brown because it is not even alleged that he was a party to any fraud;

"Considering that the defendant Watter Brown is sufficiently implicated by the plaintiff's allegation No. 10 of the declaration: "that up to the time of his entering the Western Hospital, plaintiff's said father was by his said wife, aided by her son, hindered and prevented from revoking or modifying said will of 1901 as both said defendants knew he wished and intended to do";

"Considering that it is not possible to render a final