

and that he was hindered by the defendants from making a change in his will, as he desired to do, in order to divide the estate equally between his two children.

The plaintiff's action was dismissed as regards the plaintiff's brother, on the ground that it is not even alleged that he was a party to any fraud.

The action was also dismissed as regards the plaintiff's mother, on the ground that the evidence adduced is insufficient to prove that the deceased was prevented from changing his will.

The plaintiff now inscribes in Review against this judgment as well as against several interlocutory judgments rendered in the case in favor of the defendants.

We are faced with a question of procedure which affects the evidence.

On the 14th of December 1914, an interlocutory judgment was rendered granting the defendants' motion for the issue of an open commission to examine the female defendant in Toronto. The commission issued, in spite of the opposition of the plaintiff, who did not join therein, and the examination proceeded in Toronto *ex parte*.

It does not seem that under the Code of Procedure, an open commission could thus issue without the consent of the plaintiff, 385, 385a C. P. On the 11th of June 1915, the plaintiff moved to revise this judgment before the trial judge, and his motion was dismissed.

The plaintiff then applied to be allowed to cross examine the female defendant who was present in Court at the trial, on her statements made before the open commission in Toronto. This would have probably cured the irregularity of the examination without interrogatories and cross-interrogatories on the open commission, but the