

without leave; and that this was not a proper case for the Divisional Court to enter judgment; but at most it should have ordered a new trial.

It is to be observed that the first requirement in the old sec. 77 of the Judicature Act as to leave does not appear in the section of the Act of 1904 which superseded it, which is now sec. 76 above mentioned. I was not referred to any decisions under the new section on this point, nor am I aware of any. I am of opinion, however, that the reasons existing in this case would have been sufficient to have justified leave under the old law, upon the decisions.

Motion granted; costs in the cause.

---

CARTWRIGHT, MASTER.

OCTOBER 30TH, 1906.

CHAMBERS.

DAVIES v. SOVEREIGN BANK.

*Parties—Joinder of Defendants—Pleading—Specific Performance—Motion to Compel Plaintiff to Elect to Proceed against One of Two Defendants—One Claim against both Defendants.*

This action was begun in June, and the statement of claim was delivered on 20th August, 1906.

The statement of defence of defendants the Corporation of the City of Toronto was delivered on 8th September. The amended statement of claim was delivered on 29th September, and on 23rd October the defendants the city corporation gave notice of a motion to compel plaintiff to elect whether he would proceed in his action against them or against defendant Eckardt.

The motion was argued on 26th October.

F. R. MacKelcan, for defendants the city corporation.

W. B. Laidlaw, for defendants the Sovereign Bank.

W. H. Blake, K.C., for defendant Eckardt.

Frank Arnoldi, K.C., for plaintiff.