

I have not considered the effect of sec. 140 of the Act of 1908, differing as it does from the previous legislation.

FALCONBRIDGE, C.J., and BRITTON, J., agreed in the result.

---

CARTWRIGHT, MASTER.

DECEMBER 22ND, 1908.

CHAMBERS.

TRACEY v. TORONTO R. W. CO. AND GRAND TRUNK  
R. W. CO.

*Parties—Joinder of Defendants — Cause of Action—Joint  
Liability—Tort.*

The plaintiff was a passenger on a car of the Toronto Railway Company on 7th October last, and was then seriously injured by a collision of a freight train of the Grand Trunk Railway Company with the car in which she was travelling.

The statement of claim alleged joint negligence of both defendants (paragraphs 6 and 7). Then paragraphs 8 and 9 alleged joint negligence, and stated in what it consisted. Paragraph 10 gave particulars of the negligence of the Toronto Railway Company, and paragraph 11 gave similar particulars as to the Grand Trunk Railway Company.

The defendants moved for an order that plaintiff elect against which defendant she would proceed.

Frank McCarthy, for defendants.

T. N. Phelan, for plaintiff.

THE MASTER:—A similar motion was made in *Collins v. Toronto, Hamilton, and Buffalo R. W. Co.*, 10 O. W. R. 84, 115, 263, where the cases are cited. At that date *Bullock v. London General Omnibus Co.*, [1907] 1 K. B. 264, was only lately decided. But now in *Snow's Annual Practice, 1909*, at p. 162, it is noted under Order XVI., R. 4, which corresponds with our Rule 186, and the learned authors say that by that case "it has now been decided that the joinder in an action of defendants against whom the right to any relief in respect of or arising out of the same transaction (the