

It was argued by Mr. MacGregor that there was here no case for election. His view was, that the plaintiff was suing only in respect of one bargain; that he was doubtful against whom his proper remedy was to be taken. He relied on *Tate v. Natural Gas and Oil Co. of Ontario* (1898), 18 P.R. 82. But that case is different in its facts. There is here no uncertainty as to the party liable. Both are liable if a definite bargain was made to buy the land in question. But this is not a joint but a separate liability, and the plaintiff must declare against which one he is proceeding, and all such amendments as result therefrom must be made, though nothing was said on this point in the notice of motion.

On the argument it was pointed out by Mr. Moss that the 8th clause of the prayer for relief asks, "in the alternative, for damages against the defendant firm and the defendant A.B. for breach of warranty of authority to make the said agreement for purchase for and on behalf of the said syndicate;" but that there is nothing in the statement of claim to support this. This seems true.

As the defendants have all pleaded, they were either not embarrassed by the statement of claim or were not able to deal with it effectively in the absence of A.B. In his statement of defence, delivered on 13th instant, in paragraph 13, he (A.B.) seems to have had this claim in mind when he said that he "gave no warranty of any sort in connection with his signature of the name of the defendant T. W. Lawson." The present notice of motion was served on the same day as that statement of defence was delivered.

The case is one of some complexity, and a very considerable sum is in question. This makes it desirable for all parties that the pleadings should be made as definite and correct as possible. In view of the fact that the cause was begun in August last, and of all that has taken place since, it seems fair, while granting the motion, to impose the usual term as to costs so far as applicable.

No amendment should be made of the statements of defence until the statement of claim has been amended. The statements of defence of the defendants other than A.B. were delivered in October last, and there have been examinations for discovery had since. The plaintiff can, if so advised, plead as in *Bennett v. McIlwraith*, [1896] 2 Q.B. 464. The defendants should amend within a week afterwards; and all costs lost or occasioned by this order should, in the special circumstances, be to the plaintiff in the cause. Pleadings may be delivered and other proceedings had in vacation at the will of either party.