have erected a store there. The plaintiff claims a mandatory injunction, etc.

The defendant, M. D. S., denies the allegations, and submits that the plaintiff is not the sole owner, denies any covenant but one he did not break, etc., etc.; his wife's defence is the same.

Notice of trial was served for the assizes at Hamilton, beginning October 7th, 1912, and the case was postponed by Mr. Justice Kelly to the non-jury sittings, November 18th.

The defendants moved, October 24th, for an order dismissing the action, on the ground that the plaintiff is suing for damages to land of which he and his wife are joint tenants, without joining her as a party. The motion was heard by Judge Monck, Local Judge in Chambers, and an order made that the plaintiff's wife be joined within one week, and if this were not done, that the action be dismissed with costs.

The plaintiff now appeals.

There can, I think, be no doubt that this is a case of nonjoinder, which is most objectionable: Daniels Ch. Practice, 7th ed., vol. 1, p. 182; *Stafford* v. *London*, 1 P. Wms. 428.

But it is argued that the application should be made at the earliest possible moment, and that is true: *Sheehan* v. *G. E.*, 16 Ch. D. 59; *Scane* v. *Duckett*, 3 O. R. 370.

Nevertheless, I cannot see how the plaintiff is hurt, and all rules of practice must, of course, be elastic.

The defendants raise, in their defence, that the plaintiff is not the sole owner of the land. This is probably a sufficient objection, and the plaintiff would proceed at his peril: *Nobels* v. *Jones*, 28 W. R. 726; *Lydall* v. *Martineau*, 5 Ch. D. 780; and the Court, while it would not perhaps dismiss the action, Con. Rule 206 (1), would certainly not proceed in the absence of the co-tenant; but would order that the wife be made a party, Con. Rule 206 (2).

I think that the order was properly made now, that she be made a party—but the penalty should not be (on default) that the action be dismissed—it will be sufficient that the order be made that the action do not come on for trial unless and until the amendment be made.

I think, too, that the costs, both here and below, may be in the cause, in view of the delay in moving.