

BRITTON, J.

NOVEMBER 20TH, 1906.

CHAMBERS.

HARRISON v. BOSWELL.

Pleading—Statement of Claim—Amendment after Issue Joined and Parties Examined for Discovery—Leave to Set up Fraud—Discretion—Appeal—Costs.

Appeal by plaintiff from order of a local Judge refusing leave to plaintiff to amend statement of claim.

J. H. Spence, for plaintiff.

W. E. Middleton, for defendant Boswell.

Beattie, London, for defendant Kincaid.

BRITTON, J.:—The question presented for decision on this appeal is one of some nicety and of considerable difficulty. The question is, should plaintiff, who brought suit against defendants Boswell and Kincaid, and who in his statement of claim alleged a cause of action not against the defendants jointly, but against Boswell as the owner of premises and so liable for repairs which plaintiff did, and against Kincaid upon his alleged promise to pay for these repairs, be allowed to amend by setting up an entirely different cause of action against Kincaid alone, and alleging fraud on the part of Kincaid in obtaining money from plaintiff, and alleging that part of the money so fraudulently obtained from plaintiff is now held by Kincaid in the bank as trustee for defendant Boswell. Upon the new cause of action stated in the proposed amendment, defendant Boswell would be affected only to the extent of restraining her from disposing of money which Kincaid says he holds as trustee for her, to which money plaintiff makes a claim.

I have come to the conclusion, upon a consideration of the very wide language of Rule 312, and of the cases to which I was referred, and other cases, that the amendment should be allowed. Plaintiff should have an opportunity, and in this action, of determining the position of defendant Kincaid, as between the parties, and, if entitled to any part of the \$1,100, to get it without being compelled to institute a new action against Kincaid, or against both defendants.