

proceeding—that an application should be made in the other action.

But that was not the plaintiff's way of stating her claims; and it was she, not the defendants, who had the right to make them.

Informally stated, her claims seemed to be: an arrangement with the defendant Price and his solicitors, of which the other defendants had notice, that she was to be allowed to redeem at any time; or, in the event of a sale, she was to be paid the surplus purchase-money; and that it would be a fraud upon her to deny her right to redeem, and in any case she was entitled to an account and payment of the surplus of the purchase-money; also that the defendants were guilty of trespass to her goods and chattels.

She had a right to take such causes of action, properly pleaded, down to trial—with any other she might be advised she had.

Motion dismissed; costs to the plaintiff in the action in any event.

MEREDITH, C.J.C.P.

MARCH 23RD, 1918.

*DUELL v. OXFORD KNITTING CO.

Discovery—Examination of Plaintiff Residing Abroad—Place for Examination—Rule 328—"Just and Convenient."

Appeal by the plaintiff Warfield from an order of the Master in Chambers requiring the appellant to attend at Toronto for examination for discovery at the instance of the defendants. The appellant's place of residence was in New York, where he practised as an attorney and counsellor at law.

P. E. F. Smily, for the appellant.

J. W. Payne, for the defendants.

MEREDITH, C.J.C.P., in a written judgment, said that the authority for making such an order against a party out of Ontario is contained in Rule 328, which provides for an examination taking place "at such place and in such manner as may seem just and convenient."

Fairness and convenience were against the order which had been made and in favour of an examination in New York.

A plaintiff is not bound to come into Ontario to be examined for discovery because he has brought his action in Ontario.