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No. 15

APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

JUNE 18TH, 1917.

HALCRO v. CLOUGHLEY.

Evidence—Motion to Add Party—Examination of Proposed Party as Witness upon Pending Motion—Unnecessary Party—Useless Proceedings—Costs.

Pursuant to the leave granted by FERGUSON, J.A., in Chambers (see ante 307), the witness Halladay appealed from the order of KELLY, J., in Chambers, directing Halladay to attend and submit to examination as a witness on a motion by the defendant to add Halladay as a party to the action.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

A. L. Fleming, for the appellant and the plaintiff.

T. N. Phelan, for the defendant, respondent.

At the conclusion of the hearing the judgment of the Court was given by MEREDITH, C.J.C.P., who said that it was plain that the proceedings in question were not only irregular but useless. The action was for specific performance of a contract to purchase land; the defence was fraud on the part of one alleged by the defendant to have been the agent of the plaintiff for the sale of the land. If the defence be proved, the action fails; there is no need for any other party to it. But the defendant says: "I may fail to prove agency, and in that case I want damages from the person if he were *my* agent, as the plaintiff asserts." But what has the plaintiff to do with that? This is his action. The defendant may have an action of his own against the offending agent.

The motion to add the agent as a party to this action should