

The specially endorsed writ of summons in *Segsworth v. McKinnon*, 19 P.R. 178, shewed the venue to be laid at Toronto, while the plaintiff in his statement of claim assumed to name Stratford as the place of trial. On behalf of the defendant a motion was made to strike out that part of the statement of claim which named Stratford as the place of trial, on the ground that where the plaintiff in a specially indorsed writ of summons lays the venue he is not at liberty to change by naming another place in his statement of claim. The Master in Chambers held that it was improper to so change, without first obtaining an order, in the event of the writ of summons not having been served, or upon notice to defendant in the case where the writ had been served. The venue was directed to remain at Toronto, as originally laid in the writ of summons.

In dismissing an appeal from the Master's order, Meredith, C.J., held that laying the venue in a specially indorsed writ of summons was an election binding on the plaintiff, and that clause (a), above quoted, must be read with Con. R. 138, sub-s. 2, which requires the indorsement to contain a statement as to the place of trial, and must be read subject to that provision. In the course of his judgment, Meredith, C.J., noted that where in a special indorsement the defendant intimates that he does not require a statement of claim to be delivered, it was clear that the place of trial must be that named in the indorsement on the writ of summons. It seemed to him to be a necessary result that the election thus made was a conclusive election for the purpose of the action.

The above noted peculiarity in special indorsement cases serves to distinguish them from others. Subsequently, on its being contended in the libel action of *Blackwood v. Gourlay*, (a) that the plaintiff had made a binding election when he laid the venue in a writ of summons not required to be specially indorsed, Moss, J.A., pointed out that in such a case the defendant was not prejudiced, for the plaintiff could not get on without a statement of claim, even though the defendant had dispensed with one. In that action a motion was made on the defendant's behalf to set aside the statement of claim as irregular, on the ground that the plaintiff had therein assumed to change the place of trial from the place named in the writ of summons, or for an order requiring the

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(a) Judgment dated October 2nd, 1901, (unreported).