This is an action of that importance which justifies an application of this kind being made. There is here the "*dignus vindice nodus*," mentioned by Lord Mansfield, C. J., in *Loff* v. ——

——— 50. And there is here that strong reason to believe that the case cannot be impartially tried in the county of Middlesex, where the plaintiffs reside, and where all these publications have been made, part of which is admitted by the plaintiffs to have been made directly by themselves, and the rest of which they have not satisfactorily denied.

In *Walker* v. *Ridgway*, 11 Moore, 486, the venue was changed, when a new trial had been ordered, because *anonymous* letters had been inserted in the newspapers of the county, where the cause had been first tried, reflecting on the character of the plaintiff. *Pybus* v. *Scudamore*, 7 Scott, 125.

I should have changed the venue in this and the other causes, if the application had been more promptly made, and there is no reason why it should not have been made several weeks since, for all of these publications had been made, and were well known to the defendants more than two months ago. The explanation of the defendants is that negotiations were pending for a settlement until within the last few days, when it finally fell through; but this the plaintiffs deny, and the correspondence which was had in May, and upon which nothing more was done by the defendants until the 14th of the present month, are more in accordance with the plaintiffs' allegation that the former proposal for a settlement was completely determined, and no negotiations whatever were pending, as the defendants have alleged; although it is true the defendants made a fresh proposal a few days ago, which the plaintiffs immediately declined to accept.

As this is now the 23rd of October, and the Middlesex assizes begin to-morrow, and as the defendants did not apply for a change of venue until the 19th instant, and there was no reason whatever for their not making a much earlier application, I feel obliged to discharge the summons, which I do with some regret, for I feel the defendants will not have an impartial trial in Middlesex, and that the cause of that is to be attributed chiefly, if not wholly, to the plaintiffs themselves.

Perdue v. The Corporation of the Township of Chinguacousy.

24 Vic., cap. 53—Change of Venue—Local action.

In an action for trespass to the realty situate in the County of Peel, the venue was laid in the County of the City of Toronto. An application to change the venue to the former county was refused.

Quære, is the common affidavit sufficient in such case.

[Chambers, Oct. 17, 1865.]

Jas. Patterson obtained a summons on behalf of the defendant, calling on the plaintiff to shew cause why the venue in this cause should not be changed from the County of the City of Toronto to the County of Peel, one of the United Counties of York and Peel.

The cause of action was, that the defendant cut a ditch in the highway near to the plaintiff's land, and dammed the water back upon the plaintiff's land.

The defendants pleaded several pleas, and among them one denying that notice of action had been given one month before action.

Harman showed cause, and contended that even if this be considered a local action, the venue is nevertheless rightly laid in the City of Toronto, according to the decision of *Paton* v. *Cameron* 21 U. C. Q. B. 364.

Jas. Patterson, contra.

This action is a local action strictly, and the 24 Vic. cap. 53, although giving an election to the plaintiff to lay the venue in either place in ordinary local actions, does but give this right of election in actions which by the Con. Stat. of Upper Canada, cap. 126, must be laid in the county where the act complained of was committed, and which if not laid there was an express ground of nonsuit; and that as there was conflicting decisions between the Q. B. and C. P. as to the Municipal Corporations being or not being entitled to notice of action under cap. 126 just referred to, it was better to move to change the venue than to rely upon moving for a nonsuit.

Adam Wilson, J.—I think the plaintiff had the right to lay his venue in the county of the city, even if this be considered as an action having locality actually in the County of Peel, for by the 24 Vic. cap. 53, the plaintiff had the right to elect in which county he would lay the venue.

This however, does not determine the question of this action being a local one or not, and it is not at all necessary I should decide whether it is so or not. If it be a local action, and if the plaintiff had no right to lay his venue in the City as he has laid it, the plaintiff may be nonsuited under cap. 126. If he had the right to lay it in the city, as I think he had, I ought not to change it upon the common affidavit, if it be a local action in the ordinary sense of the term; but, although if it be a local action, I am inclined to think that under the peculiar provisions of the 24 Vic. cap. 53, the venue may be changed from the county, to which the locality does not really apply, into the county in which the locality in point of fact exists, for in such a case, the general rule against changing the venue in a local action does not apply. I expressed this opinion lately in a case of *Anderson* v. *Brown*, and I still entertain the same opinion. Upon a special affidavit, however, the venue might be changed, according to my construction of this act.

If this however, be a transitory action, why should the venue be changed? the place of trial is the same in both counties. The time of trial may be a matter of consequence, and the fact that a different class of jurors is usually found in the one place from that which is found in the other may be a reason why the venue may be changed also in transitory actions, from the one of these counties into the other.

I rather think, the common affidavit is not the proper affidavit, either in a local or in a transitory action, when the purpose is to change the venue from the city to the county or the contrary.

It appears that there is no difference between an action local in its nature—as ejectment and trespass to the realty, and an action to which