

affidavit is silent on this point. [Reference to *Burke v. McInerney*, 38 C. L. J. 444, as referred to in article by Mr. Alexander MacGregor.]

The onus is on the plaintiff to set aside the letters probate of the second will. To do this, he must, one would imagine, have to call a considerable number of witnesses, in view of the statements in Mrs. Park's depositions; and by the very nature of the case these persons must be residents of Chatham. . . .

The present case is not within the letter of Rule 529 (b). Yet I think that this provision may properly be applied to a case that comes within its spirit. [Reference to *Edsall v. Wray*, 19 P. R. 245; *Betram v. Persley*, ante 264.]

The whole cause of action arose in Chatham. By the necessity of the case nearly all the material witnesses on both sides will be found there. It is in Chatham that most of the parties reside. The plaintiff and the defendant, Frederick McDonald, must pass through or by Chatham to reach Toronto, and the father is as near to Chatham, if not actually resident there, as he is to Toronto. Toronto is 179 miles distant from Chatham. The return fare is \$8.85. So that a considerable sum would be required to bring even 12 witnesses from Chatham to Toronto and keep them here for two or three days. . . . To bring any considerable number here would require at least \$200. . . . The trial is likely to be lengthy.

Another ground for the change is that of general convenience. If this action had originated in the usual way, it would have begun in the Surrogate Court at Chatham. Even if removed into the High Court, it would have been tried there. And it is there that all necessary and material evidence, whether oral or documentary, would be sought in the first instance. . . . I think that "substantial grounds" have been shewn to justify the change as being in the interests of all parties, whether litigants or witnesses. A trial at Chatham will be a great saving to all concerned, and at the same time it will facilitate a determination of the issue involved according to the very right and justice of the case, by making it easier to have all material evidence available at the trial with the least possible expense to all parties, and the least possible inconvenience to the witnesses.

The order will go as asked. Costs in the cause.

I think it well to add that plaintiff has given security for costs. If the venue were to remain in Toronto, it would be a question for the parties to consider whether additional security might not properly be ordered, for the reasons given