

case is eminently one for trial" there. This plaintiff has been fully examined for discovery. He there says that no one was present when the accident occurred. The only person who would know anything about it would be the defendants' servants and the physician and nurses at the Walkerton hospital.

When examined for discovery the defendants' counsel attempted to find out what the plaintiff's nine witnesses were expected to prove. But his counsel would not allow him to answer any questions on that matter. This is to be regretted as it was done in the face of plaintiff's affidavit that he is without means so that all the expense of the action will have to be borne by the defendants even though they succeed in their defence. The expense of a separate cross-examination should not have been imposed on defendants in this case.

It was stated by plaintiff's counsel on the argument of this motion that these nine witnesses were men who were now in Toronto but who were on the work at Walkerton and could give evidence as to the condition of the pump which caused the plaintiff's injury.

As to this it is beyond all question that two or three would be as good as nine on this point. But it is admitted that no one was present when the accident occurred, so that evidence of the defective condition at previous times would not be very cogent. If there was any serious defect one would suppose the plaintiff would have spoken of it to the foreman or superintendent. But nothing is said as to this.

This case is very like that of *Scaman v. Perry*, 9 O. W. R. 537, affirmed on appeal by Riddell, J., at p. 761, where the cases up to that time are noted. The distance of Walkerton from Toronto is only about a quarter of that of Sault Ste. Marie, so that it would not be necessary that defendants should advance much more than a third of what was ordered there.

No jury notice has been served yet through an oversight of a clerk. But it may be assumed that defendants will not oppose this being allowed in view of *Qua v. Woodmen of the World*, 5 O. L. R. 51, and later cases. If the defendants will agree, then one order can issue allowing plaintiff to serve jury notice and changing place of trial to Walkerton on their agreeing to provide free transportation for plain-