

CARTWRIGHT, MASTER.

APRIL 25TH, 1903.

CHAMBERS.

MEIERS v. STERN.

Venue—Omission to Lay—Amendment—Change of Venue—Convenience—Affidavits—Jury Notice.

Motion by defendant Stern for an order striking out the plaintiff's jury notice and directing that the action be tried at Toronto.

Grayson Smith, for applicant.

Blackwood (Blake, Lash and Cassels), for plaintiff.

THE MASTER.—The statement of claim was irregular in this, that no place of trial was named therein. Plaintiff now wishes to amend by inserting Bracebridge, while the defendant urges that the trial ought to be at Toronto. . . . Bracebridge was named in the writ of summons as the place of trial, but through some mistake it was omitted in the statement of claim. Under these circumstances the plaintiff should be allowed to amend.

The only question is, whether the trial should be at Bracebridge or Toronto. As to any preponderance of convenience, little, if any, weight can be attached to affidavits. [Reference to *Frawley v. Town of Parkdale*, unreported; *McArthur v. Michigan Central R. W. Co.*, 15 P. R. at p. 78; *Greey v. Siddall*, 12 P. R. at p. 559.]

In this case I am of opinion that it would be a greater inconvenience to plaintiff and his witnesses to go from Ufington to Toronto than for the defendant and his witnesses to go to Bracebridge. The assizes there are not usually lengthy, and the greater expense should not be thrown on plaintiff without good cause.

[Reference to *Standard Drain Pipe Co. v. Town of Fort William*, 16 P. R. 404, and *Halliday v. Township of Stanley*, ib. 493.]

The writ of summons is not before me; but in the affidavit of plaintiff's solicitor it is stated that there Bracebridge was given as the place of trial. This is not denied. I think, therefore, that plaintiff can derive some assistance from the principle of the decision in *Segsworth v. McKinnon*, 19 P. R. 178.

I am, therefore, of opinion that the affidavits in this case, taking them for what they are worth on both sides, do not make out a case for change of venue. The omission of the place of trial was, no doubt, a mere slip on the part of plaintiff's solicitor, which defendant might well have consented to have remedied, though not in any way obliged to do so.

The plaintiff will, therefore, have leave to amend as he desires, the jury notice will be struck out, and the costs of this motion will be to defendant Stern in the cause.