

On the point as to residence of witnesses the material is likewise closely scrutinized. Ferguson, J., held (s) that where there was no material shewing the number of witnesses to be called by a party and the place of residence of such witnesses, the presumption shall be that all such party's witnesses reside at the place proposed by the opposite party for the trial of the action, or relatively nearer to such last-named place. That decision of Ferguson, J., has been regarded and followed by the Master in Chambers as laying down the general principle to govern (t).

The following remarks of the Master in Chambers in two of his judgments will shew how strict the practice is in this regard: "I am quite certain that the plaintiff must have witnesses in Hamilton as to the defendant's claim, and I think it would have been only fair for him to have stated the number, instead of shielding himself under the latter part of the 13th clause, added, apparently, as an afterthought, namely, 'and that outside of the defendant's claim for wages he and myself are the only necessary witnesses residing in the City of Hamilton' (u). I am of opinion that the venue should be changed to Sarnia, especially as the plaintiffs do not state that they do not intend to call any witnesses from Petrolia. The affidavit opposing the motion merely states: 'As I am at present advised and verily believe, the plaintiffs do not propose to call any witness who resides in Petrolia'" (v).

Further, the affidavits filed on a defendant's motion to change the place of trial should state definitely the issues upon which the witnesses of known residence and sworn to be necessary are to be called. Such a requirement is suggested by Street, J.'s, adverse comment on the absence of those affidavits (w). And such issues must be prima facie pertinent and bona fide; for, in a case, (x), where a defendant, in support of his application, swore to twenty-one witnesses as necessary and material, while upon the argument counsel admitted that the greater number of these witnesses were men

(s) *Brethour v. Brooke*, ubi sup.

(t) *Canada Accident Insurance Co. v. Brown*, judgment dated April 29, 1893 (unreported); *C.P.R. Co. v. Chatham*, judgment dated March 6, 1893 (unreported).

(u) *Burke v. McInerney*, judgment dated May 10, 1892, (unreported).

(v) *Comet Cycle Co. v. Palmer*, judgment dated May 1, 1893 (unreported).

(w) *Madigan v. Ferland*, 17 P.R., at p. 126.

(x) *Rogers v. Devitt*, (unreported).