

alternative, to recover almost \$10,000 on a quantum meruit. Appearance was entered on the 26th January. The statement of claim was delivered on the 19th February, and statement of defence and counterclaim (so-called) on the 27th February. Issue was joined on the 15th March, which was the last day for giving notice of trial for the Hamilton sittings commencing on the 25th March. For some reason, notice of trial was not given until the 16th. The plaintiff moved to change the venue from Hamilton to Guelph, so that the action might be tried there on the 9th April. The Master said that the motion was made really to correct, if possible, the oversight in not serving the notice of trial in the time required by the Rules; but that which cannot be done directly cannot be done indirectly. It was strongly urged that it was most important to the plaintiff to have a speedy trial, on two grounds. His affidavit stated that four of his witnesses were obliged to go to Western Canada about the end of April and could not remain until the June sittings at Hamilton. There was no mention of their names nor of the nature of their evidence. But in a proper case this difficulty could be met by having their evidence taken *de bene esse*, and an order might issue for that purpose. The second ground was, that the plaintiff was a poor man, whose means had all been used in doing the work in question. He now wished to be free to go to New Brunswick, where he had obtained another contract since this action was commenced. The statement of defence alleged that the plaintiff had been paid over \$14,000 up to the time when he abandoned the work, which was over \$1,600 in excess of what had been earned; that the defendants had to take the work over and complete the same, which had not been done, but at the end of January this left \$1,817.93 overpaid by the defendants in excess of the contract-price. They claimed to be allowed this sum, and also the sum found to be overpaid at the completion of the work. The affidavit of the president of the defendant company confirmed these statements; which, the Master said, seemed to shew that the whole matter could not be disposed of as early as the 9th April. If the notice of trial had been given in time, it might have been possible to have sent the trial to some other place; but the Master was not aware of any case in which a motion by a plaintiff to change the venue so as to expedite the trial and correct his own mistake had been successful—none such was cited on the argument nor was any to be found in *Holmsted and Langton's Judicature Act*, under Rule 529. It seemed a necessary inference that the power to do so did not exist. The defendants' president in his affidavit stated that they would move to strike out the jury notice.