

plaintiff's choice of place of trial will not be interfered with except on substantial grounds.

I can only say that there is not here any such "proved preponderance of convenience in favour of the change" of place of trial to either Simcoe or St. Thomas as would warrant it: *Halliday v. Armstrong*, 3 O. W. R. 410. The difference of expense and the fact that the cause of action arose in the county of Elgin are not sufficient to do away with the plaintiff's prima facie right to have the trial at Goderich: *McDonald v. Dawson*, 8 O. L. R. 72, 3 O. W. R. 773.

The appeal must be dismissed; costs to be costs in the cause.

BRITTON, J.

MARCH 5TH, 1906.

CHAMBERS.

CLARK v. NISBET.

*Dismissal of Action—Want of Prosecution—Frivolous or Vexatious Action.*

Motion by defendants for an order dismissing the action for want of prosecution and as frivolous and vexatious.

F. Arnoldi, K.C., for defendants.

J. M. Ferguson, for plaintiffs.

BRITTON, J.:—I am of opinion that the defendants who have been served and who have appeared, are entitled to have this action, as against them, dismissed for want of prosecution, with costs as against the plaintiffs. No reasonable or sufficient excuse has been offered for the delay in filing and serving a statement of claim. Upon the undisputed facts the action was begun under circumstances which should have made the plaintiffs particularly careful to do, in time, whatever was necessary to be done. It is certainly not a case in which the plaintiffs are entitled to any indulgence. The facts satisfy me that the action is really frivolous and was intended to be and is in fact a vexatious one and an abuse of the process of the Court.

The note which the plaintiff Clark says he holds, and by virtue of which he claims to be a creditor of the estate of J. B. Hill & Co., is one upon which Dr. Lipsey was indorser and which Dr. Lipsey settled. He never gave to the