

Meredith, C.J., SEGSWORTH v. MCKINNON. [May 15.

Venue—Writ of Summons—Indorsement—Election—Rules 138 (2), 529.

Where in the special indorsement of his writ of summons the plaintiff names a place of trial, he is not at liberty to change by naming another place in his statement of claim. Rule 529 must be read subject to the provision of Rule 138 (2).

R. S. Robertson, for plaintiff. W. H. Blake, for defendant.

COUNTY COURT OF THE COUNTY OF YORK.

TAIT v. JACKSON.

Municipal law—Setting out fire—Violation of fire by-law—Notice—Negligence—Burden of proof.

By Municipal Act, R.S.O. c. 223, s. 532, sub-s. 16, by-laws may be passed by the Council "for regulating the times during which stumps, wood, logs, trees, brush, straw, shavings, or refuse, may be set on fire or burned in the open air, and for prescribing precautions to be observed during such times; and for preventing such fires from being kindled at other times;" and by s. 702, sub-s. 1 (b), the right to impose penalties is given for violation of any of these by-laws. In pursuance of this power the Municipality of Scarborough passed a by-law enacting that no fire was to be set out in the Township between July 1 and September 15, nor at any other time until after eight days' notice had been given to the owner or occupant of the adjoining property of the intention of any person to set out such fire, and it was also provided that any person contravening the by-law should be liable to a fine of not less than \$2 nor more than \$50. The defendant in clearing his land set out a fire, which resulted in the burning of a quantity of fire wood and timber of the plaintiff which was piled upon the public highway opposite the defendant's land. No notice was given under the by-law. Action having been brought by the plaintiff alleging negligence it was

Held—1. That the omission to give the notice under the by-law did not interfere with or deprive the parties of their common law rights, but that such omission only had the effect of rendering the defaulting party liable to the penalty imposed by the by-law.

2. That the omission to give the above notice was evidence of negligence and shifted the burden of proof as to negligence from the plaintiff to the defendant.

[TORONTO, April 18.—MORSON, J.J.]

This was an action brought by a farmer of the Township of Scarborough, in the County of York, to recover from another farmer of said Township, the value of a quantity of firewood and other timber cut into logs and piled upon the public highway opposite the defendant's land in two separate piles, called the north and south piles, the property of the plaintiff which had, as was alleged, been destroyed by fire set out by the defendant for the purpose of clearing his land. The plaintiff alleged that the fire was unlawful, as being contrary to the provisions of the by-law above referred to, passed December 16, 1890, still in force. He further alleged that the defendant did not use due care to prevent the fire from spreading, but carelessly permitted it to spread and burn for a long time.