was delivered. This might reasonably be held to have been done because the defendants knew that Barrie had been named in the writ; that it was the natural, if not the necessary, place of trial; and that no good purpose would be served by moving against the statement of claim on that ground.

This seems to me the proper view to take. Either the omission was noticed at the time by the defendants, or it was not. In the latter case they were not injured, and in the former they are not to be encouraged in lying by to spring this motion when it is too late for plaintiff to amend without being thrown over the sittings. Rule 312 defines the spirit in which litigation is to be controlled by the Court.

I therefore think that the motion should be dismissed, but without costs, as the plaintiff's statement of claim was admittedly defective, and the Rules ought to be observed. But the motion is so entirely without merit that the defendants should not be allowed to profit by it. . . . .

Moss, C.J.O. AUGUST 31ST, 1907.

C. A.—CHAMBERS.

CHICAGO LIFE INSURANCE CO. v. DUNCOMBE.

Appeal to Court of Appeal—Leave to Appeal from Order of Divisional Court — Special Circumstances — Amount in Controversy.

Motion by defendant T. H. Duncombe for leave to appeal to the Court of Appeal from the order of a Divisional Court, ante 425, allowing plaintiffs' appeal from judgment of BRITTON, J., 8 O. W. R. 898.

J. M. Glenn, K.C., for applicant.

C. St. Clair Leitch, St. Thomas, for plaintiffs.

Moss, C.J.O.—I have read the evidence and judgments and looked at the cases referred to therein and upon the argument before me, as well as some others not cited.

The case does not appear to me to present such special circumstances as to justify the granting of leave to appeal to