

CARTWRIGHT, MASTER.

NOVEMBER 30TH, 1904.

CHAMBERS.

LEACH v. BRUCE.

*Venue—Change of—County Court Action—Venue Improperly
Laid by Plaintiff—Costs of Motion to Change—Affidavit
—Solicitor.*

Motion by defendant to change venue and transfer action to the County Court of Northumberland and Durham from the County Court of Victoria.

H. E. Rose, for defendant.

Grayson Smith, for plaintiff.

THE MASTER.—It is admitted that the case comes within Rule 529 (b), which in *Corneil v. Irwin*, 2 O. W. R. 466, I held to apply to the County Court. I refer to what is said as to the proper practice in these cases in *Brown v. Hazell*, 2 O. W. R. 785.

For these reasons the order should *prima facie* be made. In this case it ought to go with costs to defendant in any event.

There is nothing to satisfy what was said in *Pollard v. Wright*, 16 P. R. 507, to be necessary to have a change of venue. Not only is there no proof of "a very strong case," but, strictly speaking, there is no proof that can be considered. The only affidavit is one of plaintiff's solicitor. According to *Hood v. Cronkrite*, 4 P. R. 279 (per Draper, C.J.), affidavits on these motions should be made by the party and not by his solicitor, who can only repeat what his client has told him. Attention was previously drawn to this in *Baker v. Weldon*, 2 O. W. R. at p. 434.

In the present case the solicitor's affidavit is vague and indefinite. If plaintiff could not speak more positively and precisely he could not expect to obtain an order to have the trial at Lindsay.