

Brazil v. Johns, 24 O. R. 209, does not apply here, that case not being within sec. 86 (now sec. 90) of the Act, because the note sued upon was for \$99, and it was the interest alone which amounted to \$23, which brought the claim over \$100; and interest was not payable except as damages. There was not a contract to pay more than \$99. In the present case there are two sums of money which Cunningham contracted to pay in Toronto, which being added together exceed \$100, and therefore the case is within sec. 90, and the only way in which the defendant could have the place of trial changed was by an application to the Judge of the Court in Toronto on an affidavit containing the requirements prescribed by sub-sec. 4 of sec. 90.

The other point on which prohibition was moved was that the learned County Court Judge did not take down the evidence at the trial, as required by sec. 121.

The taking of the evidence is required for the purpose of appeal. And the omission to take the evidence would form no ground for prohibition. Nor would such omission invalidate the trial of the cause: *Bank of Montreal v. Stat-ten*, 1 C. L. T. 66; *Sullivan v. Francis*, 18 A. R. 121.

The case is governed by *Hill v. Hicks*, 28 O. R. 390.

The motion must be refused with costs.

STREET, J.

JUNE 26TH, 1902.

WEEKLY COURT.

MACDONELL v. CITY OF TORONTO.

Assessment and Taxes—Local Improvement—“Owner”—“Taxable Person”—Petition—Two-Thirds in Number of Owners—One-Half in Value of Real Property Benefited—Buildings—Land.

Special case. The plaintiff is the “owner,” within sec. 668 of the Municipal Act, of a parcel of land in the city of Toronto, between Cecil and Baldwin streets. Nine persons, including plaintiff, are assessed as owners of property in the same block, fronting on Huron street, and “the city of Toronto” is on the roll in respect of two parcels in the same block, with the word “exempt” opposite the name. Six of the persons assessed as owners have petitioned the council for an asphalt pavement on Huron street between Cecil and Baldwin streets, as a local improvement under sec. 668 of the Municipal Act. The value of the lands and buildings of these six is, according to the roll, \$14,553, while that of the lands and buildings of the three others, including the plaintiff, is \$13,959, and the value of the vacant lots of the city is \$3,060.

A. B. Aylesworth, K.C., and C. A. Moss, for the plaintiff.

J. S. Fullerton, K.C., and T. Caswell, for defendants.