

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—Defendants plead the Statute of Limitations. If the limitation is 2 years plaintiff has brought his action too late.

Mr. McCarthy contends that the case falls under 10 Edw. VII., ch. 34, sec. 49 (h) "an action for a penalty, damages or a sum of money given by any statute . . ."

I think it clearly is not. It is an action upon the case under sub-sec. (g) of the same section.

See *Peterborough v. Edwards* (1880), 31 C. P. 231; *Thompson v. Lord Clanmorris*, [1900] 1 Ch. 718.

The trial is postponed until next jury sittings.

In view of the long delay in bringing the action (about 3½ years) defendants have been unable to find the chauffeur, and I shall not order them to pay forthwith the costs of the day.

They will be costs to plaintiff in any event of the cause.

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MASTER IN CHAMBERS.

OCTOBER 12TH, 1912.

ALSOP PROCESS CO. v. CULLEN.

4 O. W. N. 114.

Venue — *Action for Infringement of Patent of Invention* — R. S. C. (1906), c. 69, s. 31 — "May."

MASTER-IN-CHAMBERS, *held*, that under R. S. C. (1906), c. 69 s. 31, a patent action must be brought at the place of sittings of the Court in which the action is brought nearest to the residence or place of business of the defendant.

*Aitcheson v. Mann*, 9 P. R. 253, 473, followed.

This was an action for alleged infringement of plaintiffs' patent by the defendant who resides at Woodstock—as was admitted.

The plaintiffs laid the venue at Toronto. Defendant moved to change to Woodstock in reliance on R. S. C. ch. 69, sec. 31.

J. Grayson Smith, for the defendant's motion.

R. McKay, K.C., for the plaintiff.