

plaintiff contended that the additional expense of a trial at Toronto was not enough to justify the expense of a motion to change the venue, the return fare from London to Toronto being then only \$1.75. It was objected that the defendant, who resided in Arizona, did not make an affidavit on the motion, and it was submitted that the cross-examination of the defendant's agent revealed that the witnesses mentioned in the agent's affidavit, other than the President of the company, were not necessary or material witnesses for the defence.

The Master refused to change the venue, but his order was set aside by Armour, C.J., on appeal (*d*). The Chancery Divisional Court dismissed an appeal from the judgment of Armour, C.J., holding (*e*) that the place where the cause of action arose should be the place of trial of an action where there was little or no difference between the number of witnesses to be called by the parties. Thus, the view expressed by the Master in Chambers in *Berlin Piano Co. v. Truatsch*, above quoted, was sustained.

Meredith, C.J., stated in *Standard Pipe Co. v. Town of Fort William*, 16 P.R. 404, that he believed with Armour, C.J., it would be a better practice to require that prima facie an action should be tried at the place where the cause of action arose, leaving the onus upon the plaintiff to shew a preponderance in favour of the place selected by him; but considered that he was not at liberty to give effect to his belief, seeing that there were so many authorities both in this Province and England in favour of the view that the Judicature Act has given to the plaintiff the right of selecting the place of the trial, and that the onus is upon the defendant to shew that the preponderance of convenience is against the place so selected.

MacMahon, J., also formerly entertained the same view as Armour, C.J., but in his judgment in *Campbell v. Doherty*, 18 P.R. 243, said that the practice was as stated in *Peer v. North-West Transportation Co.*; *Berlin Piano Co. v. Truatsch*; *Standard Drain Pipe Co. v. Fort William*, and *Madigan v. Ferland*, 17 P.R. 124.

On the appeal from the Master-in-Chambers' order dismissing

(*d*) Judgment dated 23th April, 1898 (unreported).

(*e*) Judgment dated 3rd May, 1898 (unreported).