

CARTWRIGHT, MASTER.

JUNE 30TH, 1903.

CHAMBERS.

## TOWN OF OAKVILLE v. ANDREW.

*Venue—Change of—Rule 529 (b)—Naming Improper Venue in Writ of Summons—Motion by Defendant to Change—Estoppel by Previous Consent—Cause of Action—Preponderance of Convenience—Witnesses—Books of Bank—Extra Expense—Fair Trial—Costs of Motion.*

Motion by defendant to change venue from Toronto to Milton, pursuant to Rule 529 (b).

W. N. Ferguson, for motion.

D. O. Cameron, for plaintiffs, opposed the motion on the grounds: (1) that defendant's solicitor had agreed to Toronto as the place of trial; (2) that the cause of action arose in Toronto; (3) that there was great preponderance of convenience against Milton, sufficient to satisfy the condition imposed in *Pollard v. Wright*, 16 P. R. 507.

THE MASTER.—The first ground is displaced by plaintiffs having named Toronto in the writ of summons itself as the place of trial. This writ was issued on 4th December, 1902, long prior to the interview with defendant's solicitor on which Mr. Cameron relies. Having thus named the place of trial, plaintiff could not have changed it without an order: *Segsworth v. McKinnon*, 19 P. R. 178. Apart from that, however, I do not think that a casual question, under the circumstances of the alleged consent in this case, could have the effect of a consent order, as argued by Mr. Cameron.

As to the second ground, I cannot agree with the contention of plaintiffs' counsel. In my view, the cause of action arose in the county of Halton. It was there that the contract was made between plaintiffs and defendant, as is set out in the statement of claim, paragraphs 3 and 4. It could not be successfully contended that the alleged wrongful deposit by the deceased treasurer at Toronto was the cause of action, any more than the refusal by defendant of payment set out in paragraph 11, and which was presumably in the county of Halton.

There remains the third ground, of preponderance of convenience, under which head may be also considered the alleged difficulty of having any other result than a disagreement at a trial by a jury in the county of Halton, as set out fully in Mr. Cameron's affidavit.