

HIGH COURT OF JUSTICE.

ARMOUR, C.J., FALCONBRIDGE, J., }  
STREET, J.

[March 1.

MERCHANTS BANK v. HENDERSON.

*Promissory note—Payable at particular place—Necessary time to have funds to answer—Presentment.*

When a promissory note is made payable at a particular place it is the duty of the maker to have the funds necessary to answer the note at such particular place, and to keep them there until they are called for by the holder of the note.

The plaintiffs, the holders of a promissory note payable at a particular place, obtained a waiver of protest from the endorser without presentment at the place named.

In an action on the note against the maker, although it was shown that at the date the note matured there were sufficient funds at the place named (a banker's office) to meet the note, as well as at the time the banker failed, still as sufficient funds had not been kept there all the time until presentment, the plaintiffs were entitled to judgment.

Judgment of the First Division Court of the County of Frontenac affirmed.  
*Smythe, Q.C.*, for the appeal.  
*Britton, Q.C.*, contra.

Mr. Cartwright, }  
Official Referee.

[March 18.

CURRIE v. SQUIRES.

*Change of venue—Motion by plaintiff—Balance of convenience.*

Motion by defendants to change venue from Toronto to Lindsay: cross-motion by plaintiff to change it to Whitby. Cause of action, which was for libel and slander, arose near Lindsay, where all parties then lived. But plaintiff having moved to Toronto, laid the venue there. It appeared that four of plaintiff's and all of defendants' witnesses lived near Lindsay, but two of plaintiff's witnesses lived in Toronto.

*Held*, doubtful whether venue could be changed on the application of the plaintiff except under such circumstances as those in *Mercer v. Massey*, 16 P.R. 171.

*Held*, that there was no authority to change venue to such an intermediate place as Whitby.

*Held*, also, acting on analogy to Rule 1463, that where four of plaintiff's and all of defendant's witnesses reside where the cause of action arose, the balance of convenience is in favor of that county, and the venue will be changed if defendants desire it. Costs in cause: extra costs of witnesses occasioned by change of venue to be paid by defendants; plaintiff to have leave to appeal and to serve notice of trial for Lindsay without prejudice to said appeal.

*J. H. Moss*, for defendants.

*N. B. Gash* for plaintiff.