

CARTWRIGHT, MASTER.

SEPTEMBER 11TH, 1907.

CHAMBERS.

BARRETT v. PERTH MUTUAL FIRE INSURANCE CO.

*Notice of Trial — Motion to Set aside — Irregularity — No Place of Trial named in Statement of Claim—Place of Trial named in Writ of Summons not Specially Indorsed —Waiver of Irregularity—Costs.*

Motion by defendants to set aside plaintiff's notice of trial, in the circumstances mentioned in the judgment.

R. C. H. Cassels, for defendants.

C. A. Moss, for plaintiff.

THE MASTER:—This action was commenced with a writ of summons for special indorsement, and the place of trial was named therein as Barrie: and this could not be changed without an order. No place of trial was named in the statement of claim, as ought to have been done under Rule 529. But no objection was taken by the defendants, who delivered their statement of defence, and the cause was at issue before vacation.

On 4th September the plaintiff gave notice of trial for the sittings commencing at Barrie on 16th September, and defendants at once moved to set it aside, "on the ground that no venue is laid in the statement of claim."

It was argued, on the one hand, that the notice of trial in question was a nullity, as there was no more justification for naming Barrie than Sarnia or L'Orignal, as the action was not commenced by a specially indorsed writ, and therefore, though that form was used, the mention of Barrie in the writ served could not be invoked in aid of the notice.

No case has been reported similar to the present. That of O'Brien v. Wells, 20 C. L. J. 369, is the nearest I have found. There the place of trial had been properly named in the statement of claim, but omitted in the notice of trial, and a motion to set it aside as irregular was refused, in the absence of an affidavit that the applicant had been misled.

In answer to the present motion, it was conceded that the statement of claim was undoubtedly irregular. This, however, it was said was waived when the statement of defence