

## HIGH COURT DIVISION.

MIDDLETON, J., IN CHAMBERS.

FEBRUARY 22ND, 1915.

## HILL v. TORONTO R.W. CO.

*Venue—Irregularity in Naming—Rule 245(b)—Waiver—Application to Change Venue under Rule 245(d)—Balance of Convenience.*

Appeal by the plaintiff from an order of the Master in Chambers, made upon the application of the defendants, changing the place of trial from Barrie to Toronto.

Forgie (Bicknell & Co.), for the plaintiff.  
A. W. Langmuir, for the defendants.

MIDDLETON, J.:—This appeal was argued upon one narrow ground only. The plaintiff named as the place of trial the town of Barrie. The cause of action arose in Toronto, and the parties reside in Toronto; and, under Rule 245(b), Toronto should have been named as the place of trial. The statement of claim was delivered on the 13th January, the defence on the 22nd January, and issue was joined on the 25th January. On the 26th January, a jury notice was served. It was not until after this—on the 29th January—that the motion was made to change the place of trial. It is said that the naming of a place of trial other than that directed to be named under Rule 245(b) was an irregularity, and that the subsequent proceedings were a waiver of this irregularity.

In one sense this position is well taken: after pleading to the statement of claim, the defendants could not move to set it aside as irregular. The place of trial must, therefore, be taken to have been regularly named; but this does not preclude an application being made under Rule 245(d) to change the place of trial, upon the ground of the balance of convenience.

The balance of convenience is admittedly in favour of Toronto. The appeal, therefore, fails and must be dismissed.

Costs to the defendants in the cause.