

sides were residents of the county of Huron, in which the cause of action and counterclaim both arose. That decision should govern if in the present case plaintiff had for his own convenience or to secure a speedier trial laid the venue at Toronto or Hamilton.

Motion dismissed; costs in the cause.

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OCTOBER 27TH, 1906.

DIVISIONAL COURT.

SMITH v. MCINTOSH.

*Master and Servant—Injury to Servant—Workmen's Compensation Act—Notice of Injury—Reasonable Excuse for Failure to Give—Release of Cause of Action—Inadequacy of Payment—Surrounding Circumstances—Invalidity.*

Action for damages for injuries sustained by plaintiff on 13th March, 1905, while employed as a steam engineer in the mill or factory of defendants at Toronto.

The action was tried before ANGLIN, J., and a jury, at Toronto, on 12th and 13th February, 1906.

Plaintiff was injured by the bursting of a blow-pipe attached to the boiler which supplied the steam power to defendants' mill.

Defendants, besides denying any negligence, and alleging contributory negligence on the part of plaintiff, set up the payment before action of \$30 in full settlement, satisfaction, and discharge of plaintiff's claim. The further objection was taken, on motion for nonsuit, that no notice was served as required by the Workmen's Compensation for Injuries Act.

The trial Judge submitted questions to the jury as to negligence, etc., and asked them to assess the damages. The jury answered all the questions in favour of plaintiff, and assessed the damages at \$250.

Upon the motion for a nonsuit, the trial Judge held that want of notice was fatal. In giving his decision he further said: "I would also find, if necessary, that the release given