

MASTEN, J., IN CHAMBERS.

FEBRUARY 25TH, 1919.

DOAN v. EMERSON.

*Trial—Place of—Rule 245 (b)—Place of Residence of Plaintiff at
Date of Delivery of Statement of Claim—What is Necessary to
Effect Change in Place of Residence.*

Appeal by the plaintiff from an order of one of the Registrars, sitting in Chambers in lieu of the Master in Chambers, changing the place of trial from Hamilton to Milton.

W. S. MacBrayne, for the plaintiff.

E. H. Cleaver, for the defendants.

MASTEN, J., in a written judgment, said that the plaintiff laid the venue at Hamilton, and the defendants moved to change the venue to Milton, relying on Rule 245 (b), and maintaining that the cause of action arose in the county of Halton, and that all the parties resided in that county at the time when the statement of claim was delivered.

It was admitted that the cause of action arose in Halton, and that the defendants resided in that county; but it was contended that on the 21st January (the day on which the statement of claim was delivered) the plaintiff was residing in Toronto; and the controversy turned on the evidence regarding his residence on that date.

It was not disputed that down to the 10th January, 1919, the plaintiff resided in Burlington, in Halton, and on that date was a tenant by the month of a house in that village. His wife and his household goods and chattels remained in the Burlington house until the 3rd February, when they moved to Toronto. Meantime, on the 10th January, the plaintiff had secured permanent employment in Toronto, and was engaged in such employment. He rented a room in Toronto and slept there. He returned occasionally over Sunday to Burlington, and occasionally his wife joined him in Toronto over the week-end—but the home in Burlington was not broken up till the 3rd February. On that day the plaintiff went back to Burlington, voted at the local election in the village, and then moved his wife and furniture down to Toronto.

Reference to *Powell v. Guest* (1864), 18 C.B.N.S. 72.

Down to the 3rd February, the plaintiff's home was in Burlington. He had the intention of returning from time to time, and he must be deemed to have had a constructive legal residence there, notwithstanding the fact that he was actually living in Toronto: