

H. L. Drayton, for defendants.

R. McKay, for plaintiff.

THE MASTER:—It is admitted that plaintiff was injured, and that this took place at Hagersville, which is about 11 miles from Cayuga and 40 from Welland. Plaintiff resides at Niagara Falls, which is 50 miles from Cayuga and 20 from Welland. Of the 5 persons who witnessed the accident, 4 reside at Hagersville, and the residence of the other is unknown. Besides these 4 witnesses, defendants say they will require 10 more witnesses to give evidence as to the system in use at their quarry, all of whom reside at Hagersville.

Plaintiff is an Italian, and the affidavit in reply is, therefore, excusably made by his solicitor. It states that he will require as witnesses a number of quarry and dynamite men who reside at Niagara Falls, but he cannot say how many until after he has had discovery from defendants. He says also that "plaintiff is unable financially to take a number of experts to Cayuga," and that these are the only class of witnesses who will be required on the issues as developed in the pleadings.

Assuming that plaintiff is limited under 2 Edw. VII. ch. 15 (O.) to 3 such witnesses, this would make 4 with himself.

Assuming that defendants really require and are allowed as experts and otherwise the full number of 14 witnesses, the case will then stand as follows. They must go with 14 witnesses 30 miles further to Welland than to Cayuga. Allowing return fare at 5 cents a mile this would make only \$21. But, if the change was made, plaintiff must go 30 miles or more extra with his 3 experts at an extra expense of \$6 or \$7 at least.

It seems clear that under *McDonald v. Dawson*, 8 O. L. R. 72, 3 O. W. R. 773, the motion must be dismissed. That case is a good deal stronger in its facts in favour of a change than the present, as the difference in expense was really considerable. Here it is comparatively trifling.

Something was said on the argument about the inconvenience to witnesses; but the Court will never inquire as to this: per Rose, J., in *Standard Drain Pipe Co. v. Town of Fort William*, 16 P. R. 404; see to the same effect the judgment of Meredith, J., in *Saskatchewan Land and Homestead Co. v. Leadley*, 9 O. L. R. at p. 550.