cause of action is concerned, there is no reason whatever given for changing the venue. This being so, the question I have to decide in this case is, whether inasmuch as the defendant requires to call five witnessess, residing in the county of Grey, to support the cause of action involved in his set-off, the convenience to the defendant of having the action tried there so preponderates as to justify me in depriving the plaintiff of his undoubted right, of trying his action in the county where he has laid his venue, and as to which, standing alone without the set-off, there is no reason given for changing the venue.

It has been urged that the defendant is *entitled* to have it changed, as the plaintiff has not filed an affidavit shewing what witnesses he has to call or where they reside. But it is to be observed, that as to the plaintiff's cause of action, the defendant's affidavit does not show that *he* has any witnesses, and it does not appear that the plaintiff has been made aware of the particulars of the defendant's set-off to enable him to say whether he would admit the whole or any part of it, or whether he will be required to call any witnesses in respect of it. In *Jackson* v. *Kidd*, 8 C. B. N. S., 355, Erle, C. J., says—"the principle upon which the judges have been guided since the passing of the C. L. P. A. 1852 is this, that if it be made to appear that there will be great waste of costs in a trial of the cause at the place where the venue is laid, and much saving of costs in trying it at the place to which it is sought to change the venue, the judge is at full liberty to exercise his discretion in the matter, and to make the order if he sees fit." I agree with Martin, B., that the delay occasioned to the plaintiff is an element to be considered, and inasmuch as the plaintiff swears that he apprehends the delay might cause him the loss of his debt, I do not think it would be a sound exercise of discretion in me to expose him to such a danger, because the defendant pleads a set-off to prove which he requires five witnesses residing in the county of Grey. Whether plaintiff's apprehensions are well or ill founded, he swears to them and I do not think I should try upon affidavits the reasonableness of these apprehensions; he may have laid his venue for the winter assizes at Toronto, expressly because of these apprehensions, and I think the delay of four months which would be occasioned to the plaintiff if the proposed change should be granted, may be so material to the plaintiff that I should not deprive him of an undoubted right because it may be more convenient to the defendant to have the question of his set-off tried where he and his witnesses reside. I think, moreover, that where the defendant rests his ground of convenience upon a cause of action of his own involved in a set-off, he ought before he applies, at least to place the plaintiff in possession of full particulars of that set-off to enable him either to admit it in whole or in part, or to say whether he may not have witnesses to call in respect of it; and that if he does not do so he cannot fairly seek an advantage from the circumstance of the plaintiff not answering so much of the defendant's affidavit as relates to the expense to him of establishing his set-off. Cases of this nature must all be decided according to their particular circumstances, and the view which the judge before whom the motion is made may take of the sufficiency of the circumstances in each case, as justifying him or not in depriving a plaintiff of an undoubted right.

John J. Robson v. Warren & Washington.

Insolvency—Misdescription of creditor in schedule.

The name John Robinson appeared in the schedule of defendant Warren, an insolvent, and notices were mailed to him under that name. The insolvent swore that this entry in the schedule was intended for the plaintiff, and that he was known by both names.

But *held* that the plaintiff could not be considered to be sufficiently described as a creditor under the name of John Robinson.

[Chambers, January 5, 1870.]

This was a summons calling upon the plaintiff to shew cause why the writ of execution issued herein on 17th November, 1869, and the seizure made thereunder of the goods and chattels of the above defendant John Warren, should not be set aside, as respects the defendant Warren, on the ground that subsequent to the recovery of the judgment herein the said defendant Warren had obtained his discharge under the Insolvent Acts of 1864 and 1865.

It appeared from the affidavits filed on obtaining this summons and in answer thereto, that in October, 1864, the plaintiff obtained a judgment in this case for the sum of $552.25 damages and costs, and that execution against the goods and chattels of the defendants was issued thereon and returned *nulla bona*. The defendant Warren swore, "I believe that the above-named plaintiff recovered a judgment against me and my co-defendant the said John Washington in the year 1864, upon a promissory note for four hundred dollars or thereabouts, made by me and the said John Washington. That owing to sundry losses I was unable to pay my debts and liabilities, and on or about the 21st March, 1865, I duly caused notice under the Insolvent Act of 1864, to be duly published in the *Canada Gazette* and local paper, calling a meeting of my creditors, to be held at the office of S. B. Fairbanks, in the village of Oshawa, on the 10th day of April, 1865, a copy of which notice I duly forwarded to the plaintiff by placing the same in the post office at Oshawa addressed John Robinson, Bond Head." It appeared further from his affidavit, that on the 17th day of April, 1865, he made an assignment in duplicate under the said act to Mr. Macnachton, official assignee of the united counties of Northumberland and Durham, within which both plaintiff and defendant resided.

In the schedule of creditors of the said Warren the following entry appeared:

"John Robinson, Bond Head, judgment on suit $448," which defendant Warren swore was intended to represent this debt.

It appeared that the plaintiff resides at Newcastle, but that adjoining to or within the limits of that village is a small place known as Bond Head; but the only post office is at Newcastle.

Osler showed cause, citing *King* v. *Smith*, 19 U. C. C. P. 319; *Proudfoot* v *Lount*, 9 Grant, 70; *McDonald* v. *Rodgers*, *Ib.* 75.

W. Sydney Smith supported the summons.

Galt, J.—The plaintiff swore most distinctly