

An action (g) was brought on an agreement for the lease of a heavy machine (weighing 800 pounds) run by steam and situated in the defendant's factory, within forty yards of the Hamilton court house. The defendants set up that the machine could not do the work for which it was leased, and counter-claimed to have the agreement for a lease cancelled and for a return of the money originally paid by defendants, and for damages for expenses incurred in endeavoring to work the defective machine, which was said to have been constantly breaking down. In support of the defendant's motion to change the venue from Toronto to Hamilton, it was sworn that the defendants could not safely proceed to trial without the evidence of from 7 to 10 persons residing in Hamilton, and that it would be necessary for the judge or jury to have an inspection of the machine in question in order to comprehend the expert evidence necessary to be given in the action, the defendants' expert evidence being given by commission. In opposition to the motion, the plaintiffs shewed that they would require two witnesses at Montreal, two from Quebec, one from Boston, and a number (at least six) from Toronto. In addition, it was said that the plaintiffs would require to bring several manufacturers from Montreal and Quebec, in order to rebut the evidence of the defendants. In the course of his judgment changing the venue, after noting the great weight of the machine and its proximity to the Hamilton court house, the Master in Chambers said: "The greater number of the plaintiff's witnesses are clearly expert; and, although the case of *Nicholson v. Linton*, 12 P.R., 223, (where the venue was changed) is scarcely applicable to the circumstances here, yet I am of opinion that where it is shewn, as done here, that the judge or jury may require a view of the machine in question, it is proper that the venue should be placed so that object may be attained."

Again, although the Master in Chambers found that "the preponderance of convenience in favour of one place over the other is not great," in an action to recover under a contract for the supply of electric plant; where the Master considered the main issue in the action to be as to the completion of the contract as agreed, the venue was changed, in view of the fact that it might be necessary

(g) *Shoe Wire Grip Co. v. McPherson*, judgment dated March 25, 1893, (unreported).