

CARTWRIGHT, MASTER.

OCTOBER 3RD, 1907.

CHAMBERS.

PETTYPIECE v. TOWN OF SAULT STE. MARIE.

*Venue—Motion to Change—Convenience—Witnesses—View
—Costs—Postponement of Trial.*

Motion by defendants to change venue from Sandwich to Sault Ste. Marie.

Grayson Smith, for defendants.

H. E. Rose, for plaintiff.

THE MASTER:—The action is in respect of certain granolithic pavements laid by plaintiff at Sault Ste. Marie, under a contract with the defendants, whose engineer was to supervise the work. This work was admittedly not completed. The statement of claim says this was owing to the incompetence and improper interference of defendants' engineer, who has also not given any certificates on account of the work, as he says, but plaintiff alleges the contrary. In any case plaintiff says that he is entitled to further certificates. The engineer has been made a defendant for this purpose, and plaintiff asks for a mandamus requiring him to issue such certificates as plaintiff is entitled to.

The notice of motion was served on 4th June, but, as both parties wished to cross-examine on the affidavits filed, it did not come on for argument until 1st October instant.

The defendants lay stress on the fact that the work was done at Sault Ste. Marie; and that, as their defence is that it was so negligently and unskillfully done that it will cost \$6,000 to replace, it will be advisable that the Judge should have a view; the mayor and the engineer swear to 20 or 21 witnesses, several of them being the officers of the defendants, and rely on McDonald v. Park, 2 O. W. R. 812, 972.

The plaintiff swears to 12 witnesses, and invokes such cases as Halliday v. Armstrong, 3 O. W. R. 410, and McDonald v. Dawson, 8 O. L. R. 72, 3 O. W. R. 773.

The cross-examinations of the mayor and the engineer seem to shew conclusively that at least 5 of the 20 witnesses set out in their affidavit will not be required, i.e., the 3 members of the board of works and the town clerk and treasurer.