

CARTWRIGHT, MASTER.

OCTOBER 5TH, 1906.

CHAMBERS.

HAMILTON v. HODGE.

Venue—Change—Convenience—Action to Set aside Tax Sale.

Motion by defendants to change the venue from Toronto to Port Arthur in an action to set aside a tax sale of lands in the district of Thunder Bay.

T. D. Delamere, K.C., for defendants.

J. W. Bain, for plaintiff.

THE MASTER:—The plaintiff has been for some time past out of the province, and has not been examined for discovery. His solicitor makes an affidavit that the only evidence that can be given by the defendants (sic) is documentary, and that the case has been on the peremptory list here three times. He does not say anything about his own witnesses, which, if it were necessary to rely on this ground, would seem to bring this case within the decision in *Gardiner v. Beattie*, 6 O. W. R. 975, affirmed on appeal, 7 O. W. R. 136. For the defendants say that it will be necessary for the trial of the action to call a majority at least (if not all) of the officers of the municipality, who are all residents of Thunder Bay; that all the records must be produced, and that some have been burnt at a recent fire, and must be supplemented by oral testimony. This seems to be very reasonable. In the converse case it would not be satisfactory to have an action to set aside a tax sale of land in Toronto tried at Port Arthur, just because the plaintiff was living there. Such cases as the present seem to come within the principle of *McDonald v. Park* (a motion to change the venue from Toronto to Chatham), 2 O. W. R. 812 and 972 (cited with approval in *Saskatchewan Land and Homestead Co. v. Leadley*, 9 O. L. R. 556, 5 O. W. R. 449). In affirming the order to change the venue in that case, Osler, J.A., said that "each case must be judged by its own facts, and that this was eminently a case for trial at Chatham."

In the present case the statement of claim alleges no less than 22 distinct irregularities in the actions and records of