

dant had not entered any appearance to the writ, nor filed any statement of defence, and that although he, the solicitor, was unable to advise upon the plaintiff's evidence or to state what witnesses it might be necessary for the plaintiff to call at the trial until served with the statement of defence, yet so far as at present informed it would be necessary for the plaintiff to call as witnesses several persons residing in Chatham and elsewhere "at a great distance from" Brockville; and the plaintiff's solicitor swore that he verily believed the plaintiff's costs in producing his witnesses at Brockville would be as great, if not greater, than the defendant's costs in producing his witnesses at Chatham.

The Master's order (*d*) contained a clause providing that "the question of the additional costs, if any, to the plaintiff for witnesses by reason of changing the said place of trial be reserved, to be disposed of by the trial judge; if not so disposed of the said costs to be costs in the cause."

Boyd, C.'s, decision in *McArthur v. Michigan Central R.W. Co.* seems, therefore, to have been regarded as pretty generally applicable to the solution of the difficulty of deciding whether or not it is proper to change the venue in any case where there does not appear to be much difference in the expense and convenience of a trial at the two proposed venues, according to sworn contradictory statements; the correctness of which, however much it may be doubted, cannot, as we have seen, be fully tested on any such preliminary proceeding as an application for change of venue.

Other methods for solving the difficulty are sometimes adopted by the court. In one case (*e*) the Master in Chambers, after careful analysis of the material, held that "while the witnesses sworn to by plaintiff as residing in Hamilton are not necessary whatever," those for the defendant were material, and granted the defendant's motion to change the venue from Stratford to Walkerton. Rose, J., on appeal (*f*), reversed the Master's order, with costs to the plaintiff in any event; but the Chancery Divisional Court (Boyd, C., Ferguson, J., and Meredith, J.) required (*g*), as a condition of leaving the venue at Stratford, that the plaintiff should undertake

(*d*) Order dated 30th May, 1902 (unreported).

(*e*) *Burk v. Smith*, judgment dated June 2, 1898 (unreported).

(*f*) Order dated June 7, 1898 (unreported).

(*g*) Order dated June 13, 1898 (unreported).