

The plaintiff having named Toronto as the place of trial, the defendants moved under Rule 529 (b) to change it to Hamilton.

G. C. Thomson, Hamilton, for the defendants.

M. Malone, Hamilton, for the plaintiff.

THE MASTER.—It was argued that sufficient grounds were shewn in the plaintiff's affidavit to authorize the dismissal of the motion. Plaintiff has also offered to bear any extra expense occasioned by a trial at Toronto. He alleges that the business of the defendants is so large that "the number of farmers in the county of Wentworth with whom the defendants do not trade or do business is small, while their customers both in the city of Hamilton and in the county of Wentworth are very many;" that consequently the defendants are "personally known to the great bulk of the farmers of the county of Wentworth, as well as to a large portion of the inhabitants of Hamilton." For those reasons he alleges that "it would be almost an impossibility to get an impartial jury to try this action at the city of Hamilton."

A similar question came before me in the *Town of Oakville v. Andrew*, 2 O. W. R. 608, and I refer to what was said there on p. 609.

The present case is very much stronger for the defendants. The population of Wentworth is at least four times that of Halton. It cannot be presumed that out of 80,000 persons, of whom many hundreds must be on the jury panels, twelve cannot be found to give an impartial verdict. . . .

The venue must be changed from Toronto to Hamilton. The costs of this motion must also be to the defendants in any event, because naming Toronto as the place of trial was a violation of Rule 529 (b). I would repeat what I said long ago in *Murphy v. Township of Oxford* (affirmed on appeal by the Chancellor on 25th January, 1897, not reported), that in cases coming under Rule 529 (b) the duty of the plaintiff's solicitor is to conform thereto. For, in the first place, the action may eventually be settled before trial, and, even if not settled, the plaintiff has no right to impose on the defendant the burden of moving to restore the venue to what is *prima facie* the right county town.

If the plaintiff thinks he can make out a case, he should proceed under Rule 529 (d), and assume the onus himself, instead of trying to throw it on the defendant.