

CARTWRIGHT, MASTER.

JANUARY 19TH, 1906.

CHAMBERS.

ROYAL ELECTRIC CO. v. HAMILTON CATARACT CO.

Venue—Change—Companies—Place of Residence—Place where Cause of Action Arose—Preponderance of Convenience—Witnesses.

Motion by defendants to change the venue from Toronto to Hamilton.

W. E. Middleton, for defendants.

Britton Osler, for plaintiffs.

THE MASTER:—From the statement of claim it appears that “the plaintiffs are duly incorporated companies doing business throughout the Dominion of Canada, and having their head office at Montreal, and the defendants are duly incorporated companies having their head office at the city of Hamilton.”

The action is on 2 agreements made 8 and 6 years ago for the purchase of certain machinery from plaintiffs.. This was delivered at Hamilton to defendants, who did not find it satisfactory. After many fruitless attempts at settlement, this action was begun on 4th May, 1903.

The statement of defence alleges that plaintiffs did not perform their contract (among other defences); and defendants counterclaim for \$100,000 damages resulting from such failures on the part of plaintiffs, and for loss occasioned to defendants by their consequent inability to perform their contracts with their customers. . . .

The cause of action seems to have arisen at Hamilton. It is there that defendants reside, so far as companies can be said to have a residence, while plaintiffs in the same way reside in the province of Quebec. On this ground, as well as on that of preponderance of convenience, in view of the allegations in the counterclaim as well as in the statement of defence and the claim, the defendants argue that the motion should succeed, relying on . . . Saskatchewan Land and Homestead Co. v. Leadley, 9 O. L. R. at p. 561, 5 O. W. R. 449. . . .

In the present case the difference between Toronto and Hamilton is not on its face, in any serious sense, of importance to plaintiffs, while it would appear from Mr. Hawkins's