

have recovered and be able to attend at Goderich, Falconbridge, J., said (b): "I take it to be unquestionable that we must deal with this appeal on the facts as they were exhibited to the learned Master and to the learned Judge, whose decision is under review, and that we ought not to look at new material or listen to suggestions of possible changes in the physical condition of the plaintiff, unless it might be in a proper case, to allow a new substantive application to be made."

More extended are the applications of the practice laid down in *McArthur v. Michigan Central R.W. Co.*, made in two very recent decisions of the Master in Chambers. Thus, in the absence of any such considerations bolstering up the value to be attached to the legal right of the plaintiff to lay the venue where he pleases as are specially mentioned in *McArthur v. Michigan C.R.W. Co.* and *McAlister v. Cole*, or the possibly important fact that four of the nine witnesses sworn to be necessary to the case of the injured plaintiff in *Halliday v. Township of Stanley* were medical men in active practice, the Master held (c): "As to the number of witnesses necessary, if the defence set up that the plaintiff accepted the sum of \$72 in full of all claims between the parties is a good one, the number of witnesses on either side will be not more than one or two. However, both parties claim to have ten and eleven witnesses, respectively. I am unable to see how that number will be required; and would, therefore, in refusing the application, leave it to the trial judge to apportion the costs as may be proper, if it shall appear that the wrong place was selected—as was done in *McArthur v. Michigan Central R.W. Co.*, 15 P.R. 77."

And the same method of securing that justice be done as between the parties by providing for the subsequent apportionment of the costs in the light of the full circumstances was adopted in *Kelly v. Gilbert*; where the Master in Chambers made an order changing the venue from Chatham to Brockville, under the following circumstances: The defendant, in his affidavit in support of the motion, swore to three witnesses at Ogdensburg, New York (twelve miles from Brockville), two witnesses at Gananoque, and six at Brockville. In reply, the plaintiff's solicitor swore that the defen-

(b) *Ibid.*

(c) *Deiahey v. McDonald*, judgment dated March 27, 1902 (unreported).