

CARTWRIGHT, MASTER.

JUNE 25TH, 1906.

## CHAMBERS.

## SERVOS v. LYNDE.

*Venue — Motion to Change — County Court Action — Convenience—Witnesses—Counterclaim.*

Motion by defendant to transfer the action from the County Court of Lincoln to that of Ontario.

J. W. McCullough, for defendant.

H. E. Rose, for plaintiffs.

THE MASTER:—The action is to recover the value of a quantity of hay which was in a barn leased by defendant from plaintiffs' testatrix.

The defences are: (1) that the hay was worthless; (2) that the testatrix gave it to defendant to use for manure on the farm which was leased by her to him. The defendant also counterclaims for damages for breach of covenants in the lease and asks \$600.

Assuming that the affidavits are true, then it appears that the plaintiffs will have 8 witnesses, including two of the three executors. The third plaintiff resides in Ontario, but desires the action to be tried in Lincoln, where all the business of the deceased has been conducted.

The defendant must himself be at the trial. He also says he intends to call 10 or 12 witnesses as to the value of the hay.

Assuming that this is necessary or permissible, it would only leave a balance of 2 or 3 witnesses in favour of the motion. This, under the cases, is not a sufficient preponderance to justify the removal of the action from the county where the plaintiffs have brought it reasonably and not vexatiously.

Except in a case such as *Farmer v. Kuntz*, 7 O. W. R. 829, the fact of a counterclaim is not to be considered.

The motion fails and is dismissed with costs in the cause.

The case of *Saskatchewan Land and Homestead Co. v. Leadley*, 9 O. L. R. 556, 5 O. W. R. 449, cited for the motion, does not seem in point. . . .

[Affirmed by CLUTE, J., 29th June, 1906.]