

Bench Divisional Court in the same case also said in part: "We think that the decision of the Master in Chambers, affirmed by the Judge in Chambers, was right."

The circumstance that the cause of action arose in the county to which the defendant sought to change the venue and that a view of the locus in quo by the jury might be necessary, favoured the defendant's motion to change the venue from Sarnia to Goderich in a subsequent action (x), for damages for injuries sustained while driving along a highway out of repair. On that motion, the defendants' officers swore that the defendants would require at the trial twelve witnesses, eleven of whom lived in the township of Stanley; while the plaintiff, a resident of Sarnia, claimed to have nine witnesses, seven being residents of Sarnia, and two of the township of Stanley. The plaintiff also swore that she did not believe she could have a fair trial in the county of Huron, and that she had not sufficiently recovered from her injuries to travel to Goderich, but that she could without risk to herself be carried to the court house at Sarnia to give evidence on her own behalf. The Master in Chambers refused to change the venue, holding (y) that: "the question is really one of expense after all, and the judge at the trial can arrange that matter in disposing of the costs, as was done in *McArthur v. Michigan Central R.W. Co.*, 15 P.R., 77." Rose, J., on appeal, affirmed (z) the Master's order; and Falconbridge, J., when pronouncing the judgment of the Divisional Court dismissing an appeal from Rose, J., made it clear (a) that the appeal was decided "altogether apart from the question of the plaintiff's physical disability, and from the suggestion that as fair a trial cannot be had in Huron as in London."

Before passing from the case of *Halliday v. Township of Stanley*, it might be noted that the judgment of the Divisional Court decided another point in the practice governing the enquiry respecting witnesses.

Relative to the appellants' request for leave to read on the appeal further affidavits as to witnesses, and to the appellants' suggestion that when the autumn assizes came on the plaintiff would

(x) *Halliday v. Township of Stanley*, ubi sup.

(y) Judgment dated 2nd March, 1895 (unreported).

(z) Judgment dated 8th March 1895 (unreported).

(a) 16 P.R., at p. 495.