

HILLIARD v. BEATTIE.

In a civil action, the venue may be changed when the court at the trial term find that with reasonable effort a fair trial cannot be had in the county in which the action is brought.

MOTION, to change the venue on the ground that a fair and impartial trial cannot be had. The court, holding as matter of law that this must be made conclusively to appear, denied the motion, and the defendant excepted.

Fletcher & Heywood, Burns & Heywood, and E. Fletcher, for the plaintiff.

Ray, Drew & Jordan, Benton, and Ladd, for the defendant.

STANLEY, J. The ruling of the court is based upon *Cochecho R. R. v. Farrington*, 26 N. H. 445; and if the word "conclusively," as there used, is to receive its ordinary as well as its legal signification, and that case is to be regarded as authority, the ruling of the court was correct, and the exception must be overruled.

Conclusively is defined by Webster as "decisively," "with final determination." *Decisively* is defined by the same author, "in a conclusive manner, to end deliberation, doubt, or contest." Bouvier defines it as "that which cannot be disputed, that which cannot be contradicted by any other evidence." 1 Law Dic. 260.

To give full force and effect to the language of the court in that case, would be practically saying that in no case should there ever be a change of venue. We are compelled to dissent from this view. It is to facilitate the ends of justice that courts change the venue. *Bogert v. Hildreth*, 1 Caines 4, note a.

That cases may arise, where, from their very nature and the circumstances attending them and surrounding the parties, it would be practically impossible to arrive at the truth and do justice, is by no means improbable. When, then, such a case arises, the course of justice requires that the court, by the exercise of their power, should transfer it to some county where the parties can "obtain right and justice * * * completely, and without any denial, * * * conformably to the laws."

An examination of the authorities cited in *Cochecho R. R. v. Farrington, supra*, shows that they do not sustain the strong language there used. In *Mylock v. Saladine*, 3 Burr. 1564, Lord MANSFIELD, and WILMOT and YEATES, JJ., were "of opinion that in transitory actions the court ought to change the venue, when it appears, upon the circumstances laid before them, that there is probable ground to apprehend that a fair and impartial, or at least a satisfactory, trial cannot be had in the county where the action is brought." We think this is

the true rule. Not only is it essential to the preservation of the rights of all that there shall be an impartial administration of justice, and that those rights shall be determined by tribunals as impartial as the lot of humanity will admit, but it is also of almost if not quite equal importance that every person shall feel that he has had such a trial. That he will not so feel when probable ground exists to believe the contrary, is beyond dispute.

Exception sustained.

FOSTER and BINGHAM, JJ., did not sit.

STATE v. THE PORTLAND & OGDENSBURGH RAILROAD.

An information, in the nature of a *quo warranto*, should be filed and entered at the law term.

The court may transfer, from the trial to the law term, any petition or proceeding erroneously entered at the trial term.

INFORMATION, in the nature of a *quo warranto*, pending at the trial term. The respondent moved to dismiss, for want of jurisdiction. The motion was denied, and the defendants excepted.

The state moved that the case be transferred to the law term. The motion was granted, and the defendants excepted.

Ladd, for the state.

W. & H. Heywood, for the defendants.

STANLEY, J. This court, at the law term, has jurisdiction of, and is vested with power to issue, writs of *quo warranto*. Gen. St., c. 139, s. 1; Laws of 1876, c. 25, s. 3. The writ of *quo warranto* has been superseded in England, and in most of the states of the Union, by the *quo warranto* information, and the objects to be attained by it are identical with those secured by the ancient writ. It lies in all cases where the writ itself could have been maintained. High Ex. Leg. Rem., ss. 591, 600. The legislature must have had in view the long disuse of the writ when the power to issue it was vested in the court at the law term, and could not have intended that the one might be filed at the trial term, and that the other must be entered at the law term.

The motion to transfer was within the discretion of the court, and that discretion was properly exercised. This court, at the law and at the trial terms, although having cognizance of different matters, is