

desertion. But defendant did not abscond from Ontario in 1902, within the meaning sought to be conveyed by plaintiff in her affidavit; he simply left his home owing to unhappy differences with his family, and, although he went to a foreign country, did not "abscond." (Sweet's Law Dictionary and Wharton's Law Lexicon, referred to). He is not an absconding debtor within the meaning of sec. 2 of R. S. O. 1887 ch. 79. Defendant returned to Sarnia about 3rd or 4th December, for the purpose, as stated in his affidavit, of inducing his wife to keep a man named Cook away from his (defendant's) house, and to return to live with his wife and children. He was summoned before the police magistrate at Sarnia, charged with failure to maintain his wife and children, the summons being returnable about 10th December, and on its return, he having failed to appear, a warrant for his arrest was issued, and on 11th December he was brought before the magistrate, but was released on his own bail, and the hearing of the charge adjourned. On 15th December a proposition was made by his counsel that he would return and live with his wife, provided Cook should leave the house. Plaintiff refused to agree to this, stating that she would never live with him. The proceedings were then adjourned until 22nd December, as stated in an affidavit of defendant's solicitor, with the understanding that it should be again enlarged for another week, so that defendant might return to his house and demonstrate that his offer was made in good faith. These police court proceedings were not disclosed by plaintiff in her affidavit upon which the order for arrest was obtained. In this respect, and also in respect of not having disclosed the condition of defendant's property and his means, the affidavit was, to say the least, somewhat disingenuous. The affidavits subsequently filed by plaintiff disclosed at most an intention by defendant to return to Ohio, but plaintiff's material entirely fails to disclose any intention on defendant's part to quit Ontario with intent to defraud his creditors in general or plaintiff in particular. *Phair v. Phair*, 19 P. R. 67, followed. In any view of the statements contained in the affidavits filed by plaintiff, defendant has established that he did not intend to quit Ontario with intent to defraud. Order made for his discharge, but, having regard to all the circumstances, the order should contain a clause that defendant shall not incumber or dispose of his house and lot pending the disposition of the action. Costs of the application to be disposed of by the trial Judge.