ARMSTRONG v. ARMSTRONG—MASTER IN CHAMBERS—MAY 23.

Trial—Postponement—Grounds—Terms—Powers of Master in Chambers—Pleading—Amendment.]—Motion by the defendant for leave to amend the statement of defence, and to postpone the trial, on the ground of the absence in Europe of her daughter, who was sworn to be a necessary and material witness in her behalf. No objection was made by the plaintiff to the amendment asked for; but the postponement was strongly opposed. The reason of this was, that the relations of the plaintiff and defendant, who were husband and wife, were such that they made, as the plaintiff, the husband, said, "a continual living together almost unbearable." His counsel stated it as his firm conviction that, unless the parties separated, it was by no means unlikely that one of them might lose his or her life at the hands of the other in a fit of passion. The Master said that such a condition of affairs might, no doubt, justify unusual remedies. But it was to be observed that the plaintiff was a commercial traveller, and as such was for the greater part of his time absent from the city where his wife lived. One great point in dispute was as to the custody of the young boy who was the only offspring of the marriage. Both parents were anxious to have the custody of this child; and counsel for the plaintiff was willing, on the plaintiff's behalf, to consent to the postponement if the plaintiff was given the custody meantime. This, however, the Master said, he had no power to direct or to impose as a term of postponement. The defendant seemed to be entitled to a postponement—and the trial must be postponed until the first week of the Toronto non-jury sittings after vacation. If there should be no probability of the return of the witness by that time, her evidence should be taken on commission, if the plaintiff so required. But it would be more satisfactory to have her evidence as to the conduct and habits of the plaintiff given at the trial. The witness was the step-daughter of the plaintiff. At present engaged as a trained nurse in attendance on a patient, she could not be expected to give this up and break her engagement to expedite the trial. She was clearly not in any way under the defendant's control. Order as above; costs in the cause. See Maclean v. James Bay R.W. Co., 5 O.W.R. 495. W. G. Thurston, K.C., for the defendant. J. W. McCullough, for the plaintiff.