

MACLENNAN, J.A., held that the motion to dismiss ought not to have been made and could not succeed while an order extending the time for trial of the petition was in force, even though an appeal from that order was pending. Also, that the petitioner, having obeyed the subpœna and having appeared before the County Court Judge and having respectfully objected to be sworn or examined, on a ground which was well founded, was not guilty of a contempt.

Motions dismissed with costs to petitioner in any event.

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MEREDITH, J.

DECEMBER 14TH, 1903.

CHAMBERS.

DWYER v. GARSTIN.

*Venue — Change of — Convenience — Cause of Action—Witnesses — Expense — Undertaking — Security — Delay in Moving.*

Appeal by plaintiff from order of Master in Chambers (ante 879) changing the venue from London to Toronto, upon defendant undertaking to pay the additional expense of a trial at Toronto and paying \$100 into Court.

R. S. Snellie, for plaintiff.

J. MacGregor, for defendant.

MEREDITH, J., held that plaintiff is still dominus litis, and that his choice of a venue cannot be interfered with except upon substantial grounds. Defendant says he has 8 witnesses at Toronto, and plaintiff says he has 13 at London. It is impossible to say that plaintiff is wrong and defendant is right, plaintiff not having been cross-examined on his affidavit. So the preponderance of convenience, instead of being against London, is in favour of London. There was great delay in making the application, and that is another reason against granting it. It is not proper practice to make a conditional order such as this. The venue should either be changed upon a clear preponderance of convenience, or it should not be changed.

Appeal allowed and motion refused. Costs in the cause.