

tiffs' action. The plaintiffs object to the substance of the defence sought to be raised by these paragraphs, not that they state evidence which it is proposed to adduce in support of these facts. In that respect the paragraphs are to a slight extent objectionable, but that is not the substantial part of this motion.

I think the appeal should be allowed and these paragraphs restored to the statement of defence. Costs to be costs in the cause.

MURPHY V. LAMPHIER—MEREDITH, C.J.C.P., IN CHAMBERS—
FEB. 18.

Trial—Jury—Validity of Will—Motion in Chambers Referred to Trial Judge—Venue.]—This action, concerning the validity of a will, was transferred from a Surrogate Court to the Supreme Court of Ontario. The defendants asked for an order for a trial by jury. The learned Chief Justice said that they were not entitled to that: it was a matter in the discretion of the Court; and the onus was upon those who sought it, to shew that it would be the better mode of trial. There was not sufficient evidence now upon which the question could be best determined: the trial Judge would be in a better position to deal with it; and there was no good reason for saying that any one would be prejudiced by the delay necessary in having it considered by him. The parties failed to get down to trial, as was expected, at the Toronto non-jury sittings last week; and there was no certainty when they could now get the case tried there; in addition to that, it was not a York but a Peel case. The provision of the order made on transferring the case into this Court, that the case should be tried at the York assizes, was an error. The venue should be changed back to Peel: the action set down for trial there at the next ensuing assizes; and this motion enlarged to be brought on before the presiding Judge at such assizes, at the earliest moment possible after the opening: costs of the motion to be costs in the action. A. Ogden, for the defendants. J. G. O'Donoghue, for the executors.

RE WESTACOTT—BRITTON, J., IN CHAMBERS—FEB. 20.

Infants—Custody—Rights of Father—Custody of Young Children—Habeas Corpus—Welfare of Children.]—An application by George W. Westacott, father of Marshall Edgar Westa-