LOGIE, J., IN CHAMBERS. APRIL 23RD, 1920.

VAN PATTER v. VAN PATTER.

Trial—Place of—Motion by Plaintiff to Change—Action for Alimony—Preponderance of Convenience—Speedy Trial.

An appeal by the plaintiff from an order of the Master in Chambers refusing the plaintiff's application to change the place of trial of an action for alimony from Barrie to Toronto.

W. R. Smyth, K.C., for the plaintiff.
W. Lawr, for the defendant.

LOGIE, J., in a written judgment, said that the material before him consisted of a copy of the pleadings and an affidavit of the plaintiff's solicitor to this effect: that the defendant had left Barrie and it was not shewn where he was; that it was the intention of the plaintiff, on her return from New York, to reside in Toronto; that the next sittings at Barrie for the trial of actions would be on the 19th April (now past); that a trial might be had in Toronto as cheaply as at Barrie; and that, if the venue was not changed, there was no possibility of a trial before the autumn.

From a perusal of the pleadings it was evident that, if the plaintiff proposed to establish at the trial the charges made against the defendant, some witnesses must be called who apparently resided in Barrie.

As the defendant in an action for alimony must pay the disbursements in any event, the difference in expense is of some importance: Fogg v Fogg (1887), 12 P.R. 249.

Preponderance of convenience is the usual ground upon which a defendant moves, but it may also be a cogent reason for a motion upon the plaintiff's part if he or she has manifestly chosen an improper place of trial; no case had, however, on the above material been made out by the plaintiff for a change of venue on that ground.

The plaintiff is dominus litis, no doubt; but a plaintiff's rights have been limited by many decisions, one of which is that the Court will not change the venue on the plaintiff's application merely to speed the trial unless it is shewn that the plaintiff is in danger of losing the debt: James v. James (1870), 3 Ch. Chrs. 58; and that was not shewn here.

Appeal dismissed with costs.