Ferguson, J.] [October 17.

FOGG v. FOGG.

Venue—Alimony action—Preponderance of convenience.

The venue was changed from Whitby to Toronto in an action of alimony upon the application of the defendant where there was not sufficient difference in expense to warrant the change in an ordinary case, because of the rule in alimony cases which imposes on the defendant the burden of advancing and paying all the disbursements on both sides in any event. The circumstance that two of the defendant's witnesses, who reside in Toronto, were public officers, and that their absence would be a public inconvenience was also considered in determining the preponderance of convenience.

Chapple, for the plaintiff.

H. Cassels, for the defendant.

Ferguson, J.] [October 19.

IN RE GABOURIE, CASEY v. GABOURIE.

Leave to appeal—Extension of time—Excuse for delay—Requirement of justice.

Two of the defendants (legatees) in an administration suit, appealed from the report of a master, and thereby succeeded in charging the plaintiff, an executor, with their shares of a sum of $4,000 which the executor had lost to the estate. The other defendants did not appeal, and as to them the report became absolute on the 24th March, 1887. Three of these defendants in September, 1887, after the success of their co-defendants' appeal was established, moved for leave to appeal and to extend the time, their excuse for the delay being that they had supposed the appeal of their co-defendants would enure to their benefit.

Held, that justice required that the time for appeal should be extended and these defendants let in to appeal, upon their placing the executor in as good a position as he would have occupied if they had appealed within the time allowed, notwithstanding that the $4,000 was lost to the estate by an innocent mistake of the executor, that he had acted as he did by reason of the instructions given him by the testator, and his acting and taking advice according to the instructions had led directly to the mistake.

Langdon v. *Robertson*, 12 P. R. 139, followed.

Birls v. *Beatty*, 6 Madd. 90, distinguished.

J. Maclennan, Q.C., for the plaintiff.

Hoyles, for the defendants.

Ferguson, J.] [October 19.

MCKAY v. KEEFER.

Partition—Reference—Fees to experts—Chy. G. O. 240.

In the cause of a reference to make a partition of lands, a master appointed two skilled persons to examine the property and prepare a scheme of partition, and on their evidence he adopted the scheme prepared.

Held, that the course adopted by the master was a reasonable one, that he had the power under Chy. G. O. 240 to take such course, and that the fees paid to the skilled persons by the defendant should be taxed to him.

W. H. Blake, for the defendant.

Middleton, contra.

Galt, J.] [October 19.

MCMASTER v. MASON.

Discovery—Examination of witness—Production of documents—Fraud—Rules 109, 285.

In an action of ejectment, where the plaintiff claimed title under a conveyance from the father of the defendant in 1885, and the defendant claimed by virtue of possession since 1874, under a verbal agreement to purchase made with his father, and the defendant said on his examination that he had paid his father money on account of the purchase which he had entered in his father's books, an order was made for examination of the father and production of his books for the purpose of discovery before the trial.

Held, that the father might have been made a party under rule 109, on the ground of his having been a party to a fraud in conveying land to the plaintiffs after he had made an agreement with his son, and such being the case there was no doubt of his liability to be examined under rule 285.

Walter Macdonald, for the plaintiffs.

F. E. Hodgins, for the defendant.