

the State of Michigan and part of the time in Ontario; he had no property or means in Ontario; his wife had a home in Michigan, and after his marriage he made that his place of residence so far as possible, and had no other place of residence. When this action was begun in March, 1901, the plaintiff was at his wife's home in Michigan, and his solicitor indorsed that as his place of residence on the writ of summons. In January, 1902, after delivery of statements of claim and defence, the defendants obtained under Rule 1199, on *præcipe*, an order for security for costs. The plaintiff and his wife had then come to Ontario for the winter and were boarding at an hotel. The plaintiff stated on affidavit that he had come to reside permanently in Ontario.

D. L. McCarthy, for plaintiff.

J. D. Falconbridge, for defendants.

MEREDITH, J.—The order was rightly made, not only under Rule 1199, but also because plaintiff actually resided out of Ontario at the time. After his marriage, his residence was at his wife's home, in Michigan. As to the question whether, if the plaintiff now really resides in Ontario and intends to reside therein, that circumstance is sufficient to relieve him from the order: at law it ordinarily would not, especially if security had been given: *Badnall v. Haylay*, 4 M. & W. 535; *Westenberg v. Mortimore*, L. R. 10 C. P. 438; *Hatley v. Merchants' Despatch Co.*, 12 A. R. 640: but in equity it would: *O'Conner v. Sierra Nevada Co.*, 24 Beav. 435; *Mathews v. Chichester*, 30 Beav. 135; *Harvey v. Smith*, 1 Ch. Chamb. 392. No case, however, seems to lay down any clear and positive rule upon the subject. . . .

The plaintiff being a British subject, always a resident of Ontario until his second marriage about six years ago, and even during that time frequently sojourning and doing business in Ontario, and security not having been given, but a *præcipe* order only obtained, I should feel authorized in relieving him from that order, if quite satisfied that he is now actually, and intends to continue, a resident of Ontario: see *Place v. Campbell*, 6 D. & L. 113. . . . But, upon the evidence, I look upon the wife's home in Michigan as really the place of residence of herself and the plaintiff, and likely so to remain: see *Marsh v. Beard*, 1 Ch. Chamb. 390; *Watson v. Yorston*, 1 U. C. L. J. N. S. 97.

The local Master has found that the plaintiff's ordinary place of residence is at his wife's home, and that his residence in Ontario, boarding at an hotel, though for months past, is merely a temporary residence. I have not disagreed with him in that finding; the burden of proof was upon the