

MASTER-IN-CHAMBERS.

MAY 20TH, 1913.

STAUFFER v. LONDON & WESTERN.

4 O. W. N. 1336.

*Costs—Security for—Next Friend—Return to Jurisdiction after
Long Absence—Expressed Intention to Remain—Dower Action
—Place of Trial—Change of—Con. Rule 529 (c.)*

MASTER-IN-CHAMBERS held, that where the next friend of the plaintiff, a person of unsound mind not so found, was her son who had returned to Ontario after an absence of 21 years and who expressed his intention to remain here during his mother's life, security for costs could not be ordered against him.

Gagne v. C. P. R., 3 O. W. R. 624, followed.

In an action to recover dower in land in the county of Bruce, the venue has been laid at Toronto.

The plaintiff sues by a next friend as being herself a person of unsound mind not so found by inquisition. The defendants move (1) to change the venue to Walkerton, and (2) for security on ground of next friend as not being resident in Ontario, nor having property in the province.

W. Proudfoot, K.C., for defendant company.

Stanley Beatty (Kilmer & Co.), for defendant Geddes.

C. M. Garvey, for plaintiff.

CARTWRIGHT, K.C., MASTER:—C. Rule 529 (c) applies and no ground is shewn for having a trial elsewhere than at Walkerton.

As to security for costs. The next friend is the plaintiff's son. He has been cross-examined and says he intends to remain here during his mother's life—though for the past 21 years he has been in the western provinces. He is now living with his mother in Toronto. I think he comes within the protection of the judgment in *Gagne v. C. P. R.*, 3 O. W. R. 624. That was a case where it was the plaintiff's own action. Here perhaps the remarks in *Scott v. Niagara Navigation Co.*, 15 P. R., at p. 411, may have some application. But I think the facts of this case are so similar to those in *Gagne v. C. P. R.*, *supra*. The next friend is a labouring man and unmarried. It was only right and natural that he should return to his aged mother on hearing of his father's death last December and resolve to stay here as long as she lives to look after her.

Order accordingly. Costs in the cause.