present case, it is difficult to imagine one in which a delay of perhaps at the outside five months imposes less hardship or inconvenience of any kind on the plaintiffs. . . . I have only to add as an additional argument in favour of defendant having all reasonable facilities for presenting his case, that his share under the will is abundant security (at least tenfold) for any costs that may hereafter be given against him, if he should fail in his contention.

APRIL 24TH, 1903.

C.A.

CAVANAGH v. CASSIDY.

Leave to Appeal—Security for Costs—Residence of Plaintiff.

Motion by plaintiff for leave to appeal from order of a Divisional Court (ante 303) reversing order of BRITTON, J. (ante 143) and restoring order of Master in Chambers (ante 27), which required plaintiff to give security for costs, and to dispense with security.

S. B. Woods, for plaintiff.

J. E. Cook, for defendant.

The judgment of the Court (MOSS, C.J.O., MACLENNAN, GARROW, MACLAREN, JJ.A.), was delivered by

MOSS, C.J.O.—We think no special circumstances are shewn to justify a further appeal in this case. We are unable to see that the Divisional Court has laid down any rule of practice or adopted any construction of Rule 1198 not in accord with Allcroft v. Morrison, 19 P. R. 59. The utmost that can be said is that the Court erred in its view of the facts of the case. But error of that description, even if shewn, cannot be accepted as a sufficient ground, by itself, for the exercise by the Court of the discretion vested in it.

We do not, however, disagree with the view of the Divisional Court. A perusal of the voluminous material put in upon this application leads towards the same conclusion. Before October, 1902, the plaintiff was undoubtedly ordinarily resident out of Ontario, and he seems to have failed to establish that he is now more than temporarily resident here.

Even if we had thought the case a proper one for giving leave to appeal, no ground is made for dispensing with the ordinary security. In order to deprive the respondent of the right to security, which is given him by Rule 826, circumstances of an exceptional nature must be shewn. These existed in Fahey v. Jephcott, 1 O. L. R. 198. But the want of means or resources has not been deemed a sufficient circumstance: Thuresson v. Thuresson, 18 P. R. 414. And there is nothing else in this case.

Motion dismissed with costs.