

SECURITY FOR COSTS FROM FOREIGNERS WITHIN THE JURISDICTION.

make the standard for the measure of the Chancellor's foot. What an uncertain measure would this be! One Chancellor has a long foot, another a small foot, a third an indifferent foot. It is the same thing with the Chancellor's conscience." In this Province are some twenty-four local Masters, and we think that it will greatly further the maintenance of a uniform practice to report the decisions made in the head office by the Master at Toronto.

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FIRST PAPER.

The reason of the law requiring security for costs is given by Alderson, B., in *Barratt v. Power*, 9 Exch. 339, viz., that in the event of judgment going against a person residing abroad, he cannot be taken in execution under the process of the court. Under the present state of the law in this province this reason is not applicable, as all process of a personal nature for the enforcement of judgments is quite abolished. Nevertheless, the practice continues of requiring security for costs in all cases of an absent plaintiff. With this branch of the practice generally it is not our intention now to deal, but with that particular part of it merely, which is set out in the caption of this article.

It was held by the late Sir John B. Robinson, sitting in Chambers in 1855, that when a plaintiff whose residence was in England came out to this country merely for the purpose of attending to the suit, and intending to return when it was over, he must give security for costs: *Gill v. Hodgson*, 1 Prac. R. 381. In 1863, this case was doubted by Mr. Justice Adam Wilson, sitting in Chambers, and he refused to be bound by it: *Hawkins v. Patterson*, 3 Prac. R. 262, 9 U.C.L.J. 324. There the true rule was held to be, that if a plaintiff be actually a resident in the province at the time of the application, and if he intend to remain here until after trial or judgment in the cause, then security should not be ordered.

This conflict of authority has not been pronounced upon by the full court; and the question arises, which case correctly represents the law. This question we shall deal with,—and to do so properly a short historical review of the cases touching upon this branch of practice had better be made. In the Eng-

lish Common Pleas it has always been held that the court will not require the plaintiff to give security for costs on account of his being a *foreigner*, if he be actually in England; *Porrier v. Carter*, 1 H. Bl. 106 (1789); *Jacobs v. Stevenson*, 1 B. & P. 96 (1797); *Maria v. Hall*, 2 B. & P. 236. In *Ciragno v. Hassan*, 6 Taunt. 20, s. c. 1 Marsh. 421 (C. P. 1815), the court refused to order security where the plaintiff was a foreigner about to go abroad, but who was yet in the country. This case was followed by the same court in 1819, in *Anon.* 3 Moo. 78, s. c. 8 Taunt. 737. In the same year the court refused the order even when the plaintiff, being a foreigner, was absent from the country; but it was shewn that he resided in England four months in the year: *Durell v. Matheson*, 8 Taunt. 711.

In 1840, the Court of Exchequer adopted the practice of the Common Pleas, refusing to order security in a case where the plaintiff was a foreigner usually resident abroad, and was out of the jurisdiction at the time the suit was commenced, though within it when the application was made: *Darling v. Harman*, 6 M. & W. 131. This case was followed by the same court in 1852, when the principle was laid down that security for costs should not be exacted from a foreigner unless he be actually out of the jurisdiction: *Tambisco v. Pacifico*, 7 Exch. 816. The court here refused to follow (the leading case on the other side of the question) *Oliva v. Johnson*, 5 B. & Ald. 908, decided in the Q. B. in 1822, where security was ordered: the plaintiff there being a native of Canada, and though then in England, yet having no permanent residence in that country.

The court of Common Pleas has been careful to mark the distinction between the general rule, that if the plaintiff being a subject is not domiciled in England he will have to give security; and the case of a *foreigner*, whose temporary residence is sufficient to exempt him from giving security: see *Naylor v. Joseph*, 10 Moo. 522; *Mahonz v. Martine*, 4 Moo. 357; Chitty's Archb., 12th ed. 1415. The case of *Gurney v. Key*, 3 Dowl. 559, decided by Williams, J., in 1835, appears to have been the case of a British subject who was out of the country at the time of the application: see 9 U.C. L. J. 325. An exceptional case is to be found among the decisions of the Common Pleas, in *St Leger v. Di Nuovo*, 2 Sc. N.