

strongly, the horse was not only "an obstruction likely to cause an accident," to use the words of the by-law, but an accident was inevitable if the car was not stopped. To that belief the carter gave effect by voice and action. If, as the conductor charges, the man ought to have been at his horse's head, then the car ought to have been under such control as to give him time to get there. Moreover, a truckman is not bound to stand at his horse's head to watch for cars passing at uncertain intervals. He is not a trespasser if he uses reasonable diligence in loading and unloading. He was exercising a right as one of the public for whose benefit the street is maintained. But the conductor was not, at the moment, keeping a "vigilant watch to avoid all manner of accident;" he admits that his back was to the horses and that when he heard the carter shouting it was too late to stop the car.

I have dealt with this matter at greater length than the amount at stake would seem to warrant, but my judgment involves a principle of some importance, and I trust it will stand as a warning to conductors and drivers in like case.

I strike off the item of \$9.50 for costs of protest, because it was not included in the notice of claim, and award plaintiffs \$47.42 with costs.

*F. E. Gilman*, for the plaintiff.

*Cooke & Brooke*, for the defendants.

### CIRCUIT COURT.

HULL (County of Ottawa), Nov. 30, 1887.

*Before WURTELE, J.*

*TREMBLAY V. BASTIEN.*

*Procedure—Temporary absence of plaintiff—Security for costs.*

**HELD:—***That the temporary absence of the plaintiff from the province, while working on a timber limit in Ontario, but while his family continues to dwell in his home in the province, does not render him liable for security for costs.*

**PER CURIAM.** The defendant has moved for security for costs, alleging that the plaintiff is now a resident of the State of Michigan, and that he is bound, not being a resident of the

Province of Quebec, to give security for the defendant's costs in this action. The plaintiff has produced counter affidavits, establishing that he is not in Michigan, but in the Province of Ontario, having been engaged to work on a timber limit for the winter, for the purpose of earning a livelihood for himself and his family, and that his wife and children have continued to occupy his home in the city of Hull.

The article of our code respecting security for costs is different in its provisions from both the old and the new law of France. By the French law, security is required from aliens, whether resident or not, and is not required from a citizen, even when a non-resident; while, by our law, an alien who is resident in the province is not required to give security; and a non-resident, whether an alien or a British subject, is bound to do so.

The question to be decided is whether, under the circumstances shown by the affidavits filed by the plaintiff, he is or is not resident in the province; and this question is one of considerable importance in this locality where hundreds of men are every winter in the same position as the defendant.

One's residence is the place where one abides or lives habitually, and not accidentally, whether or not one's domicile is established there. When one ceases to dwell in a place, one loses in a literal sense his residence in that place; but in a juridical sense, when it becomes necessary to apply to a given case the effect which the law attaches to residence, a continuous and uninterrupted habitation is not strictly necessary to keep one's residence and retain the quality of a resident. As in the case of domicile, so in that of residence—it is not lost by an absence of even some duration for the purposes of business or for the performance of work, if the absence is only transitory, and if it clearly appears that there is no intention of dwelling habitually where one goes for such a purpose, but on the contrary that there is an intention to return to one's dwelling and that the absence is only for an express undertaking. (*Mourlon*, Code Civil, No. 322.)

A temporary absence of this kind may be likened to a journey or trip, which does not affect one's domicile, nor in like manner one's