

I therefore think that the motion should be dismissed with costs in the cause to plaintiff. If, after discovery made, defendants still think there is ground for renewing their demand, they may do so. . . .

CARTWRIGHT, MASTER.

SEPTEMBER 25TH, 1903.

CHAMBERS.

MOFFATT v. LEONARD.

*Security for Costs—Residence of Plaintiff out of Ontario—
Assets in Jurisdiction—Costs of Motion.*

Motion by the defendant for security for costs, on the ground that plaintiff resides out of Ontario (Rule 1198 (a)).

C. A. Moss, for the motion.

A. W. Ballantyne, for plaintiff.

THE MASTER.—There was sufficient proof of assets within the jurisdiction to defeat the motion, but I reserved judgment on the question of the costs to see if defendant rightly brought the motion or not.

This depends on whether plaintiff is a resident out of Ontario. . . . The plaintiff is manager of a joint stock company, carrying on business in Ontario and having its head office at Woodstock. The plaintiff's wife and family reside in Woodstock. He is agent of the company at Detroit, but visits his family, as it is set out in defendant's affidavit, "once a fortnight and sometimes once a month, which visits generally extend over a Sunday only, and not as a rule for a longer time than a day and a half." The plaintiff does not qualify this any further than by saying he has resided in Woodstock for past 18 years and still considers it his fixed place of abode. Neither party was cross-examined.

Applying the decision in *Nesbit v. Galna*, 3 O. L. R. 429, 1 O. W. R. 218 to this case, I think the plaintiff is a resident in Ontario. . . . The converse is to be found in the present case. It is my opinion that the plaintiff's ordinary place of residence is at his wife's home in Woodstock, and that his residence in Detroit is merely temporary.

To hold otherwise would render many citizens of Ontario non-residents in such a sense as would require them to give security for costs in any case in which they were plaintiffs (or possibly defendants counterclaiming).

The motion is dismissed—costs in the cause.