

streets on the plan, which were included in the judgment and order in the foreclosure action.

Plaintiff asks to have it declared he is the owner and entitled to a two-thirds interest in the soil and freehold of the street known as Symes road. The defendants have not removed any sand or gravel therefrom, and the plaintiff's rights, if any, have not been interfered with.

The interest of plaintiff and the other mortgagors having been foreclosed, as well in the streets as in the other lands included in the mortgages, he cannot maintain an action against defendants for the removal of gravel and sand therefrom.

The action must be dismissed with costs.

APRIL 7TH, 1903.

DIVISIONAL COURT.

CAVANAGH v. CASSIDY.

*Security for Costs—Residence of Plaintiff—Ordinary Residence out of Jurisdiction — Temporary Residence in Ontario.*

Appeal by defendant from order of BRITTON, J., in Chambers (2 O. W. R. 143) reversing order of Master in Chambers (2 O. W. R. 27), which required plaintiff to give security for costs.

J. E. Cook, for defendant.

S. B. Woods, for plaintiff.

The judgment of the Court (BOYD, C., FERGUSON, J., MACLAREN, J. A.) was delivered by

BOYD, C.—The decision of the Master ought not to have been disturbed, and should be restored. Rule 1198 governs as to the law, and the affidavits and evidence supply the facts. The plaintiff is a person ordinarily resident out of Ontario. He is 36 years of age, and has for 34 years prior to the end of last September lived in the United States, where he followed business pursuits, and where live his relatives with whom he was accustomed to make his home. For about six months he has been in Ontario, engaged in American stock-broking agencies. He is now, and was when the order was made, in no settled business, but was expecting something that might turn up which would keep him in this city and country. He declines to state under oath how long he will be here, and the conclusion is, that he is merely a transient visitor, who may leave the country at any moment for his place of usual residence. Appeal allowed and order of Master restored. Costs here and below to defendant in the cause.