

McLeod, J.]

[Dec. 20, 1905.]

MASON v. STEAMER ST. HELENS.

*Security for costs—Admiralty Court Rule No. 134—Plaintiff intending to remain in jurisdiction until trial—Effect of absence from jurisdiction.*

Plaintiff was in the jurisdiction of the Court on Feb. 8, 1905, when summons was issued. He left the province, April 10, and stayed in Montreal for some two months. When the case came down to hearing, application was made for security for costs on affidavit that plaintiff was a non-resident. Plaintiff returned to New Brunswick when application was being argued, and made affidavit that he intended to remain until judgment. It was contended that since the application must have failed at the time the summons was issued, it could not be made later with success, but there being no other affidavit to shew residence other than the above, the application was granted.

Coster, K.C., for plaintiff. McLean, K.C., for defendant.

## Province of Manitoba.

### KING'S BENCH.

Dubuc, C.J.]

MALCOLM v. McNICHOL.

[Dec. 22, 1905.]

*Negligence—Landlord and tenant—Liability of employee for negligence of contractor—Principal and agent—Presumption of negligence from circumstances.*

Plaintiff was tenant of a store owned by defendant McNichol. The lease provided that the premises should be sufficiently heated by the landlord. In December, 1904, the heating was found deficient and, the landlord being absent from the province, his agent, Pepler, employed the other defendants, a firm of plumbers, to put in an additional radiator and do what should be found necessary to heat the premises adequately. During their operations the safety valve in one of the radiators was left open all night, presumably by the carelessness of a workman employed by the plumbers, and such a quantity of steam escaped into the store that the large stock of millinery and other goods owned by the plaintiff in the store were very seriously damaged and were afterwards sold by the plaintiff by auction at twenty cents in the dollar of invoice prices.

The other findings of fact were that the agent Pepler had