Lindley, J., made an order at chambers that the plaintiff should give security for costs.

This order was rescinded by the Common Pleas Division, and the defendants appealed.

Fullerton, for the defendants, cited *Goodwin* v. *Archer*, 2 P. Wms. 452; *Adderly* v. *Smith*, 1 Dickens, 355; *Duke de Montellano* v. *Christin*, 5 M. & S. 503; *Ainslie* v. *Sims* 17 Beav. 57; *Pray* v. *Edie*, 1 T. Rep. 267; *Ciragno* v. *Hassan*, 6 Taunt. 20; *Jacobs* v. *Stevenson*, 1 B. & P. 96: *Anon.*, 8 Taunt. 737; *Oliva* v. *Johnson*, 5 B. & Ald. 908; *Naylor* v. *Joseph*, 10 J. B. Moore, 522; *Dowling* v. *Harman*, 6 M. & W. 131; *Tambisco* v. *Pacifico*, 7 Ex. 816; 21 L. J. 276; Ex.; *St. Leger* v. *Di Nuovo*, 2 Scott, N. R. 587; *Cambottie* v. *Inngate*, 1 W. R. 533; *Swinbourne* v. *Carter*, 22 L. T. Rep. (O.S.) 123; 2 W. R. 80; *Swanzy* v. *Swanzy*, 4 K. & J. 237; *Raeburn* v. *Andrews*, 30 L. T. Rep. (N.S.) 15; L. Rep., 9 Q. B. 118; *Westenberg* v. *Mortimore*, 32 L. T. Rep. (N.S.) 402; L. Rep., 10 C. P. 438.

Lumley Smith, for the plaintiff, cited *Calvert* v. *Day*, 2 Y. & C. Ex. 217.

THESIGER, L. J. I have been asked to deliver judgment first, although there is no difference in the result at which the members of the court have arrived. The case comes before us as an appeal by the defendant from an order of a divisional court, rescinding an order of Lindley, J., by which the plaintiff had been directed to give security for costs. The action is brought against the executors of a person named Foster, to recover certain arrears of an annuity alleged to be payable to the plaintiff under an agreement, by which Mr. Foster, in consideration of the plaintiff going and residing abroad, agreed to pay her an annuity for as long as she might live. The statement of claim alleges that the plaintiff has resided abroad since the making of the agreement, until she came temporarily to this country for the purpose of the present action; and it is out of the statement of claim, and on the affidavits which have been filed, that the question of security for costs arises. It is sufficient to say that, in my opinion, the true inference to be drawn from the facts is that the plaintiff is *bona fide* here for the purpose of this action, but is only temporarily here, and if the action is determined in her favor, will certainly leave this country, and very probably, if the action is determined against her, will leave the country under such circumstances as to prevent the defendants from successfully issuing process for the costs of this action. Therefore, unless there is a settled practice that under such circumstances a plaintiff cannot be ordered to give security for costs, there is some reason why the plaintiff in this case should be called upon to give security. But the Common Pleas Division have decided that the established rule of practice is that, whether the plaintiff be a foreigner or an Englishman, where he is resident in this country at the time of the application for an order for security for costs, though only temporarily so resident, the courts have no power to require him to give security. I think this decision is right, and in order to show that it is so, it is necessary to go into the cases which have been referred to on the point. In favor of the view that a plaintiff who is temporarily resident within the jurisdiction cannot be compelled to give security for costs, there are five cases in which the point has been decided. In 1815, *Ciragno* v. *Hassan*, 6 Taunt. 20; in 1819, an *Anonymous case*, 8 id. 737; in 1827, *Willis* v. *Garbut*, 1 Y. & J. 511; in 1840, *Dowling* v. *Harman*, 6 M. & W. 131; and in 1852, *Tambisco* v. *Pacifico*, 7 Ex. 816. So far I have only referred to the authorities at common law, and in addition to these decisions the text-books at common law practice, viz., Chitty's Archbold's Practice, vol. 2, p. 1415, 12th ed., and Lush's Practice, vol. 2, p. 981, 3d ed., state the rule to the same effect, though some doubt is expressed, because there have been decisions to the contrary. Three decisions have been cited in argument, which were supposed to be contrary to the conclusion at which the court below has arrived; but two of these cases, when examined, appear to be no authority for the proposition to support which they were cited. These are *Naylor* v. *Joseph*, 10 J. B. Moore, 522, and *Gurney* v. *Key*, 3 Dowl. P. C. 559; for in both those cases, though the plaintiffs may have been within the jurisdiction of the court when the actions were brought, yet it is clear that when the applications for security for costs were made they were out of the jurisdiction. Therefore, there is only one case which is really in favor of the contention that security for costs can be ordered in a case like the present, and that is *Oliva* v. *Johnson*, 5 B. & A. 908, decided in 1822.