

The orders allowing the third party notice to issue will, therefore, be set aside, and the present motions will be dismissed with costs to plaintiffs in each action in any event and to third party forthwith after taxation.

CARTWRIGHT, MASTER.

MAY 18TH, 1906.

CHAMBERS.

LEVY v. MANES.

Security for Costs—Residence of Plaintiff—Adoption of Permanent Residence—Rule 1198 (b)—Burden of Proof.

Motion by defendants under Rule 1198 (b) for an order requiring plaintiff to give security for plaintiff's costs.

W. J. Elliott, for defendants.

Samuel King, for plaintiff.

THE MASTER:—On 17th March last plaintiff was engaged by defendants to come to Toronto, on an engagement for one year. At that time he was and had always been a resident of Montreal. Plaintiff was dismissed on 26th April, and has brought this action for wrongful dismissal. . . .

For the motion reliance was placed on *Nesbit v. Galna*, 3 O. L. R. 429, 1 O. W. R. 218, and *Kavanagh v. Cassidy*, 5 O. L. R. 614, 2 O. W. R. 27, 143, 303, 391. But the facts of these cases were very different. Here plaintiff has been cross-examined on his affidavit. He states that he has accepted another position in Toronto, and is residing here with his wife in rooms which they have furnished, and that he intends to make Toronto his permanent place of residence. On leaving Montreal plaintiff disposed of nearly all his household effects, and has bought others here.

From this it is clear that the cases cited above, as well as *Barry v. Oshawa Canning Co.*, 3 O. W. R. 190, are not in point. Here the onus is on defendants to shew that they are entitled to an order which in all probability would render it impossible for plaintiff to proceed.

In my opinion, that onus has not been satisfied, and the motion is dismissed with costs in cause to plaintiff.