

HUGUNIN *v.* THATCHER.*Circuit Court, N. D. New York.*

1883.

PRACTICE—NON-RESIDENTS—SECURITY FOR
COSTS—TIME WITHIN WHICH DEMAND MUST
BE MADE.

The time within which a defendant shall make his demand for security for costs, from a non-resident plaintiff, is not confined to the time before issue is joined, but the defendant may require the security to be filed at any stage of the litigation, provided he is not guilty of laches or bad faith. Sections 3268 and 3278 of N. Y. Code of Procedure adopted by this court.

In Equity.

R. H. Duell, for defendant.

A. H. Walker, for complainant.

COXE, J. The defendant asks for an Order compelling the complainant, who is a non-resident, to file security for costs. The application is opposed solely on the ground that it is made too late; the demand for security being served five days after the answer was filed. The provisions of the Revised Statutes of New York relating to security for costs, (now sections 3268-3278 of the Code of Civil Procedure,) are adopted by this court. Rule 4, Cir. Ct.; Rule 64, Dist. Ct.; Conk. Treat. (5th Ed.) 468; *Lyman Ventilating, etc., Co. v. Southard*, 12 Blatchf. 405.

It will be seen, upon an examination of the sections referred to, that they are entirely silent as to the time when the defendant may require the security to be filed. There is nothing to warrant the construction that he must make the demand before issue joined. He may—the plaintiff being a non-resident—make it at any stage of the 106 litigation, provided he is not guilty of laches or bad faith. The courts of New York have so decided, and upon such a question their decision should be followed by this court. *Burgess v. Gregory*, 1

Edw. Ch. 449; *Micklethwaite v. Rhodes*, 4 Sandf. Ch. 434; *Northrop v. Wright*, 1 How. Pr. 146; *Robinson v. Sinclair*, 1 Denio, 628; 2 Wait, Pr. 572; 1 Barb. Ch. Pr. (2d Rev. Ed.) 102.

There should be an order requiring the complainant, within 20 days, to file security in the sum of \$250, and providing for a stay of proceedings, in the usual form.

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