

and the price of the goods ordered amounted to several hundred dollars. The agent was not a resident agent in Montreal, but a traveller for plaintiffs.

Defendants shew that plaintiffs' place of business was at Toronto, and that, according to the ordinary course of business, the acceptance of the order which they had given would be by letter from Toronto; and an acceptance was necessary for the formation of a contract between the parties.

On the facts of this case, an acceptance by post was within the contemplation of the parties, and, that being the case, the contract must, I think, be taken to have been made when plaintiffs' letter accepting the offer was posted at Toronto: *Henthorn v. Fraser*, [1892] 2 Ch. 27; *Brewer v. Moore*, [1892] 1 Ch. 305.

We are, therefore, I think, bound to follow the decision of a Divisional Court in *Phillips v. Malone*, 3 O. L. R. 47, 492, 1 O. W. R. 200, and to hold that the order allowing service to be effected in Montreal was rightly made. . . .

It would, perhaps, have sufficed to rest our decision upon the authority of *Phillips v. Malone*, but, in view of the able and strenuous arguments of the learned counsel for defendants, we have thought it better to consider the question raised independently of the decision in that case, so that, if we had come to the conclusion that we ought not to follow it, defendants might have had the benefit of our referring the question to a higher Court for decision under the provisions of sec. 81 of the Judicature Act.

The claim of plaintiffs as indorsed on the writ is for breach of contract and for goods sold and delivered, and it is quite clear that, as respects the first of these claims, the order was rightly made. The contract provides that the goods are to be delivered f.o.b. at Toronto. The property in the goods, therefore, passed to defendants upon such a delivery being made, and a breach of the contract by non-acceptance was a breach within Ontario of an obligation of the contract to be performed within Ontario: *Nathan v. Siltz*, 4 Times L. R. 570; *Empire Oil Co. v. Vallerand*, 17 P. R. 27 (C. A.)

[Reference to Rule 162 (e); English Order xi. r. 1 (e); *Comber v. Leyland*, [1898] A. C. 524, 529; *Bell v. Antwerp and Brazil Line*, [1891] 1 Q. B. 103, 107, 108; *Glen v. Browning*, 34 L. T. 760; *Robey v. Snaefell Co.*, 20 Q. B. D. 152; *Hassall v. Lawrence*, 4 Times L. R. 23; *Golden v. Barlow*, 8 Times L. R. 57; *Thompson v. Palmer*, [1893] 2 Q. B. 80.]

The English cases appear to indicate that in determining whether there is an implied stipulation in the contract that,