

through B., transacted or carried on some business in Ontario for the steamship company, within the meaning of r. 23, and therefore the service upon B. for the company was good service. Difference between r. 23 and the English Order IX., r. 8, pointed out. [Okura & Co. v. Forsbæck Jernverks Aktiebolag, [1914] 1 K.B. 715, distinguished.] Held, by Riddell, J., in Chambers, refusing a motion (under r. 507) for leave to appeal from the order of Masten, J., that there was no good ground to doubt the correctness of the decision.

Ingersoll Packing Co. v. N.Y.C.R. Co. et al. 42 O.L.R. 330. [See 13 O.W.N. 481, 14 O.W.N. 134.]

#### C. BY PUBLICATION; SUBSTITUTIONAL SERVICE.

(§ II C-30)—ABSENCE FROM PROVINCE.

Recourse can only be had to service by publication in a newspaper when the defendant is actually absent and has neither domicile nor residence nor place of business in the province.

Carrier v. Dubé, 51 Que. S.C. 528.

#### SUBSTITUTIONAL SERVICE — PUBLICATION OF NOTICE BY ADVERTISEMENT.

Howard v. Lawson, 19 Man. L.R. 223. Griffin v. Blake, 21 Man. L.R. 547.

(§ II C-34)—SUBSTITUTIONAL SERVICE — WHEN ORDER MAY BE GRANTED.

An application for an order for service ex juris of a writ of summons is properly made on the affidavit of the plaintiff's solicitor, if it appears that he is in as good a position to know the facts upon which the application is based as the plaintiff himself.

O'Neil v. O'Neil, 11 D.L.R. 440, 24 W.L.R. 84, 4 W.W.R. 478.

Where the end aimed at in an order for substituted service is service upon defendant's brother, service upon a brother other than the one designated in the order may be confirmed and allowed as sufficient.

Wallace v. Potter, 7 D.L.R. 114, 22 W.L.R. 281, 2 W.W.R. 1085.

Under Consolidated R. 938 (a), Ont. C. R. 1897, giving an executor right to serve a notice for the determination without the administration of the estate of any question affecting the rights or interests of the persons claiming to be crediting devisee, legatee, next-of-kin or heir-at-law or cestui que trust, the court will not grant leave to serve substitutionally one who has a claim upon certain land of the estate as the rule is not intended to enable a determination whether certain property belongs to an estate or not.

Re Turner, 5 D.L.R. 731, 22 O.W.R. 543.

#### D. PRIVILEGE—EXEMPTION.

(§ II D-45)—SOLDIERS—STATUTORY FORMALITIES — AFFIDAVIT — ACTIONS IN REM.

Section 144 of the Imperial Army Act 1881, c. 58, as applied to Canada by the Militia Act, c. 41, R.S.C., s. 74, which provides that no process may issue against a

soldier without the preliminary filing of an affidavit under subs. 4, applies only to proceedings, but not to an action for the foreclosure of an agreement for the purchase of lands, in which case it may be done by a notice in writing.

Gale v. Powley, 24 D.L.R. 450, 22 B.C.R. 18, 32 W.L.R. 65, 8 W.W.R. 1312.

(§ II D-49) — SUSPENSION OF ACTIONS AGAINST LIQUOR LICENSEES BECAUSE WAR—SETTING ASIDE SERVICE.

A proclamation during a state of war, prohibiting the taking of any action against liquor licensees during the proclaimed period, does not deprive creditors from issuing the writ; but service of the writ, if arising out of an action in connection with the business as liquor licensees, will be set aside and the action continued to all other claims.

Imperial Elevator & Lumber Co. v. Kuss, 25 D.L.R. 55, 8 S.L.R. 360, 9 W.W.R. 606, 32 W.L.R. 941, varying 9 W.W.R. 164, 32 W.L.R. 378.

#### SETTING ASIDE SERVICE—ACTIONS AGAINST LIQUOR LICENSEES — SUSPENSION BECAUSE WAR.

Miller v. Kuss, 25 D.L.R. 816, 9 W.W.R. 763, 32 W.L.R. 957.

#### FAITS ET ARTICLES—DEFAULT OF DEFENDANT.

Klipstein v. Eagle Mining Co., 20 Que. K. B. 239.

#### III. Return; proof; setting aside writ or service.

(§ III-55)—CROWN PRACTICE—MOTION TO QUASH.

Where r. 37 of the Crown Office Rules is adopted, then, on return of the summons, counsel may move to quash on the return without further order and no recognition may be entered into, r. 36 not applying.

R. v. Dhana Singh, 25 Can. Cr. Cas. 251, 7 W.W.R. 1101.

#### FIXING RETURN DAY.

The return day of an originating summons may be fixed at Chambers.

C.P.R. Co. v. Hall, 10 W.W.R. 11.

#### AMENDMENT OF RETURN—LAW FIRM.

Service of a motion on a firm of lawyers, in which there has been, after the appearance, a change as to one member in the composition and name of said firm, and made on the firm as newly composed, is irregular and null; a motion to amend the bailiff's return of service will be dismissed, sauf a se pourvoir, s'il y a lieu.

Dougan v. Montreal Tramways Co., 18 Que. P.R. 64.

#### RETURN—SATURDAY—EXTENSION OF TIME.

If the delay of 3 days given to the plaintiff by art. 154, C.C.P., to obtain permission to return a writ of summons which has not been returned on the day fixed, expires on a Saturday, permission should be asked for within such 3 days; the delay is not extended to Monday.

Duval v. Wade, 19 Que. P.R. 177.