ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

PRACTICE—WRIT OF SUMMONS—SERVICE OUT OF JURISDICTION—CONTRACT "WHICH ACCORDING TO THE TERMS THEREOF OUGHT TO BE PERFORMED WITHIN THE JURISDICTION"—PLACE OF PAYMENT—RULE 64 (E)—(ONT. RULE 162 (E)).

Duval v. *Gans* (1904) 2 K.B. 685, was an action brought against the defendants out of the jurisdiction or a contract for the price of goods sold in England to the defendants, who resided out of the jurisdiction. The contract of sale did not state in terms where payment was to be made. The defendants applied to set aside the writ of summons on the ground that the contract was not one "according to its terms" to be performed within the jurisdiction. Bucknill J., refused the motion and the Court of Appeal (Stirling and Matthew, L.JJ.) affirmed his decision on the ground that the meaning of the Rule 64 (e), (Ont. Rule 162 (e)) was not that it must be expressly mentioned in the contract that it was to be performed in England, but that it was sufficient if it appeared from the contract that that was the legal intendment of the parties; and further, that it was not necessary that the whole contract should be performable in England, but it sufficed if some substantial part of it was to be so performed. Following *Reynolds* v. *Coleman*, 26 Ch. D. 453, and *Rein* v. *Stein* (1892) 1 Q.B. 753, they held that it was a necessary implication that the payment under the contract in question was to be made in England, and therefore the service of the writ of summons out of the jurisdiction was properly allowed.

TRADE-MARK—"FRANCHISE"

Bow v. *Hart* (1904) 2 K.B. 693, though dealing with other matters concerning the jurisdiction of County Courts, not necessary to be here considered, may be noted for the fact that Kennedy, J., decided that a trade-mark is not a "franchise."