

certain lands with it, and also the goods seized under the attachment. Amongst other things, the plaintiff asked for payment of the moneys stolen, an order for the delivery or sale of the goods and a declaration that the defendants had no claim to the said lands as against the plaintiff. It appeared that the defendants had left the province before the commencement of the action and their whereabouts were unknown to the plaintiff.

Held, 1. The facts did not bring the case within Rule 201 of the King's Bench Act, R.S.M. 1902, c. 40, or any of its sub-rules, so that it was not a case in which the statement of claim could be served out of the jurisdiction.

2. It could not be said that the defendant had committed a tort in Manitoba within the meaning of paragraph(e) of Rule 201. *Anderson v. Nobles*, 12 O.L.R. 644, followed.

3. A court has no power to enforce a personal money claim against a person who is neither domiciled nor resident within its jurisdiction unless he has appeared to the process or has expressly agreed to submit to the jurisdiction of such court. *Sirdar Gurdial Singh v. Rajah of Faridkote* (1894) A.C. 670, and *Emanuel v. Symon* (1908) 1 K.B. 302; and, therefore, apart from Rule 202 of the King's Bench Act, the possession by the defendants of property in Manitoba gave the Court no jurisdiction over the defendants in an action in personam.

4. If evidence had been given that the defendants were possessed of property in Manitoba to the value of \$200, it would have been necessary to consider whether, under Rule 202, the statement of claim could be served out of the jurisdiction without previously obtaining leave to serve it. *Gullivan v. Cantillon*, 16 M.R. 644, and also whether the plaintiff's cause of action against the defendant was upon a contract within the meaning of that rule.

Writ of attachment set aside with costs as having been issued without jurisdiction; but, as there was a possibility that the plaintiff might succeed in establishing a claim to the specific chattels seized, an order was made for the detention of them by the sheriff until further order on condition that the plaintiff should always keep the cost of detaining, storing and insuring the goods paid in advance, so as to protect defendants against loss in case the plaintiff should fail to establish his claim, with leave to either party to apply at any time to vary or rescind the order.

O'Connor and Blackwood for plaintiff. *Hudson and Levinson* for defendants.