

was, no doubt, insufficient, but, upon the material before the Master on the motion, he, upon the authority of *Great Australian Co. v. Martin*, 5 Ch. D. 1, properly dealt with the motion upon the material before him, which would have been sufficient in the first instance to have warranted the making of the order.

The right to have service out of Ontario allowed is rested by the plaintiff upon the provisions of Con. Rule 162, clauses (e) and (h).

The Master, following *Canadian Radiator Co. v. Cuthbertson*, 9 O. L. R. 126, being of opinion that, upon the material before him, it was in doubt, “(1) whether payment under the contract was made in Ontario or Quebec, and, if made in Quebec, whether payment was to be made in Ontario, and (2) whether the defendant had assets in Ontario sufficient to satisfy Rule 162, clause (h)—though that seemed not unlikely”—made the order which is complained of.

If, as Mr. McCoomb deposed, there was no binding contract prior to the shipment of the goods at Morrisburg, the case comes, according to *Blackley v. Elite Costume Co.*, 9 O. L. R. 382, within clause (e) of Rule 162, for the contract would then be governed by the law of Ontario, and in that case the place of payment would be in Ontario, where the creditor resides.

Mr. McCoomb's statement is disputed by the defendant, and in such cases, as decided by the Chancellor in *Canadian Radiator Co. v. Cuthbertson*, the proper practice is “not to try the disputed question of jurisdiction upon affidavits, but to permit the defendant to enter a conditional appearance, and thereafter raise his contention on the record.”

It is also, I think, shewn that the defendant, at the time the order was made, had assets in Ontario, within the meaning of clause (h) of Rule 162. That one person or firm, at all events, owed him a garnishable debt of more than \$200, is not open to question.

It was contended . . . that this debt was not assets in Ontario within the meaning of the Rule, but I am unable to agree with that contention. That a garnishable debt is assets within the meaning of a similar Rule was the opinion of the Court of King's Bench in Manitoba in *Brand v. Green*, 13 Man. L. R. 101; of Mathers, J., in *Gullivan v. Cantelon*, 16 Man. L. R. 644; and of Macdonald, J., in *Bank of Nova Scotia v. Booth*, 10 W. L. R. 313.

The decisions of the Manitoba Courts are in accordance with the statement of the law by Mr. Dicey in his *Conflict of Laws*, 2nd ed., p. 310; . . . *Commissioner of Stamps v. Hope*, [1891]