

Montreal telephoned to the plaintiffs and offered them a certain price for apples, which they accepted. The acceptance being at Belleville, the contract was made there, and the law of Ontario would govern—the price would be payable at the home of the plaintiffs in Ontario. The price not having been paid, there was a breach within Ontario of the contract to pay, which ought to have been performed within Ontario; and the case fell within Rule 25 (e).

Some letters passed between Johns and the plaintiffs, from which it was argued that payment was to be made by means of a bill of exchange drawn by the plaintiffs on the defendants. This, however, was not the meaning of the correspondence; it was Johns who was to draw upon his principals; and Johns did in fact, later on, remit to the plaintiffs \$750 on account of the price.

Some delay in shipment took place, and when the apples arrived in England, the defendants said, they were in bad condition and of poor quality. There was room for litigation as to the liability for this loss; but that did not affect the question of jurisdiction; the case was one in which service out of Ontario might properly be allowed; and the Master's order was in substance right.

If the plaintiffs desired, the order might be modified as indicated, so as to permit the writ to be re-served after amendment.

The costs of the appeal should be paid by the defendants to the plaintiffs in any event of the cause.

MIDDLETON, J., IN CHAMBERS.

JUNE 14TH, 1916.

OSHAWA LANDS AND INVESTMENTS LIMITED v.
NEWSOM.

Solicitor—Fund in Court—Assertion of Lien or Right to Equitable Intervention of Court to Enable Solicitor to Obtain Payment of Costs—Fund not Created or Preserved by Solicitor—Right of Solicitor—Security Furnished by Client—Nature of Claim for Costs—Counterclaim.

Motion by the third parties for payment out of Court to them of moneys paid in by the plaintiffs pursuant to the judgment in the action. See 8 O.W.N. 260, 9 O.W.N. 355.

E. T. Coatsworth, for the third parties Medcalf and Poutney.
Hamilton Cassels, K.C., for the third party Mackenzie.
N. W. Rowell, K.C., for the defendant and his solicitors.