

GREEN V. UNIVERSITY ESTATES LIMITED—CAMERON, MASTER IN  
CHAMBERS—MARCH 25.

*Writ of Summons—Service out of the Jurisdiction—Action for Deceit—Tort Committed in Ontario—Rule 25(e)—Conditional Appearance.*]—Motion by the defendants for liberty to withdraw their appearance and defence, to enter a conditional appearance, and to move to set aside the service of the writ of summons and statement of claim. The plaintiffs' claim was to set aside an agreement for the purchase of certain lots in Tuxedo Park, parish of St. Charles, in the Province of Manitoba, and to recover all moneys paid to the defendants, on the ground that the agreement was obtained by fraud and misrepresentation. The appearance was entered and the statement of defence delivered, according to the affidavits filed by the defendants on this application, inadvertently. The Master said that, admitting the inadvertence, the defendants would be in no way prejudiced if this application were dealt with as a motion to set aside the service of the writ of summons. There would be no object, at this stage, in allowing the defendants to enter a conditional appearance. Such an appearance would simply be entered for the purpose of enabling them to dispute the jurisdiction, and it would better serve the interest of the parties to deal with the application on its merits. The only question then to be decided was, whether this was a proper case to allow the issuing of a writ of summons for service out of the jurisdiction. There could be no doubt that the plaintiffs, on the material filed, brought themselves within Rule 25(e), i.e., the action was founded on a tort committed in Ontario. There was, therefore, no reason for allowing a conditional appearance to be entered. Reference to *Standard Construction Co. v. Wallberg*, 20 O.L.R. 649; *Anderson v. Nobels Explosives Co.*, 12 O.L.R. 650. The present Rule 25(e) is identical with *Con. Rule 162(e)*. Motion dismissed with costs to the plaintiffs in any event. Grayson Smith, for the defendants. J. A. Hutcheson, K.C., for the plaintiffs.

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PIERCE V. GRAND TRUNK R.W. CO.—BRITTON, J., IN CHAMBERS  
—MARCH 26.

*Appeal—Leave to Appeal to Appellate Division from Order of Judge in Chambers—Rule 507—Refusal of Leave—Particu-*