to enforce the alleged contract against him or to obtain damages for its breach.

No injustice or inconvenience would accrue to the plaintiffs from this interpretation of the Rule. There was nothing to prevent them making a formal call on the shares and suing for the amount.

The defendant Sutton's appeal should be allowed and the service upon him set aside, with costs here and below.

ROSE, J., was of opinion, for reasons stated in writing, that the order giving leave to effect service out of Ontario should not have been made. There were no assets which could be rendered liable for the satisfaction of the judgment, even if the cause of action was upon the contract (and, semble, it was not).

But the power to allow a conditional appearance should be exercised only where it is doubtful if the plaintiff can bring himself within the Rule by reason of the facts being in issue: Standard Construction Co. v. Wallberg (1910), 20 O.L.R. 646, 649; and this case, where the facts were admitted, and the only matter to be determined was the meaning of the Rule, did not come within the doubtful class.

The service of the writ should be set aside, and the plaintiffs should pay the costs of the motion and appeals.

LENNOX, J., agreed with ROSE, J.

MEREDITH, C.J.C.P., read a dissenting judgment. He was of opinion that the service out of the jurisdiction was properly allowed, but that leave to enter a conditional appearance should not have been granted.

In the result the defendant Sutton's appeal was allowed and the service was set aside; on the plaintiffs' appeal no order was made except that the plaintiffs pay the costs; and costs of the motion and appeals were ordered to be paid by the plaintiffs.