

were reserved. The proper course was to permit the reference to proceed, and, when the Master had made his report, and the amount payable by the defendants to the plaintiff was thus ascertained, a further application might be made to have the question of the amount of the security to be given in order to stay execution fixed. The granting of a stay or of an order to proceed appeared to be discretionary: *Saskatchewan Land and Homestead Co. v. Moore* (1913-4), 5 O.W.N. 183, at p. 187, and 6 O.W.N. 262.

Application dismissed with costs.

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MIDDLETON, J., IN CHAMBERS.

JUNE 14TH, 1916.

GRAHAM CO. LIMITED v. PRITCHARD.

*Writ of Summons—Service out of the Jurisdiction—Contract—Sale of Goods—Place of Payment—Place of Performance—Rule 25 (e)—Irregularities in Form and Issue of Writ—Waiver—Amendment—Defendants out of the Jurisdiction Sued as Partners—Amendment without Personal Re-service—Service on Agent in Canada.*

Appeal by the defendants from an order of the Local Master at Belleville refusing to set aside the writ of summons and the service thereof upon the defendants out of the jurisdiction.

W. N. Ponton, K.C., for the defendants.

W. S. Morden, K.C., for the plaintiffs.

MIDDLETON, J., in a written opinion, said that objections as to certain irregularities in the form of the writ and its issue had no substance, and were in fact waived by failure to make them at the proper time, or the irregularities were curable by amendment.

The plaintiffs sued the defendants, doing business in England, in their firm name. As the defendants did not carry on business in Ontario within the meaning of the Rules, it was their right to be sued in their individual names. The Master, recognising this, directed the writ to be amended, but dispensed with further service upon the defendants; and this was objected to. The order might be varied by directing personal service upon one Johns, the agent of the defendants, at Montreal, the plaintiffs being willing.

The plaintiffs were a company carrying on business in Belleville, Ontario; Johns came from England to Montreal, and at