

FARMERS BANK OF CANADA v. SECURITY LIFE ASSURANCE CO.—  
MASTER IN CHAMBERS—SEPT. 23.

*Writ of Summons—Service out of the Jurisdiction—Order Authorising—Motion to Set aside—Guaranty Executed in another Province—Conditional Appearance.*—This was an action on a guaranty given by the defendants, who were all resident at Montreal, where the document was executed on the 29th December, 1909. The usual order for service abroad was made under Con. Rule 162 (e); and the defendants moved to set this aside. The guaranty was admittedly signed at Montreal, and it was argued that *prima facie* this would not import payment outside the Province of Quebec. It was further contended that, in any case, even if the guarantors had to seek out their creditor, this would be done in Montreal itself, because sec. 70 of the Bank Act, R.S.C. 1906 ch. 29, provides that "the bank shall establish agencies for the redemption and payment of its notes at the cities of Toronto, Montreal," and others; and that, therefore, payment of the obligation in question could be properly made at Montreal, unless there was an express agreement to the contrary. It was contended, in addition, that a bank, being incorporated to do business throughout the Dominion, could not be said to be resident in the Province in which its head office was situated more than in any other; and the provisions of sec. 76(a) of the Bank Act were also emphasised. The Master said that the questions were new in his experience, and were worthy of consideration. Copies of the whole correspondence had been put in by the plaintiffs, comprising letters passing between the defendants and the head office of the plaintiffs, or their Toronto solicitors, and pressing for payment. If this was to be made at the head office or to the solicitors, then the order was right. But this was nowhere exactly stated, though the whole of the negotiations were with them only. The matter was left in such doubt, that the best course seemed to be to allow the defendants to enter a conditional appearance, and leave the plaintiffs to prove a cause of action within the Province, on peril of having their action dismissed with costs. This was approved in the recent case of *Farmers Bank of Canada v. Heath*, 3 O.W.N. 682, 805, 879; and a similar order should be made in this case; the defendants to have a week to appear; costs in the cause. H. E. Rose, K.C., for the defendants, M. L. Gordon, for the plaintiffs.