

leave to serve out of the jurisdiction. The bill of lading under which the goods were shipped contained the following clause: "The claims, if any, for damages for short delivery or any other cause shall be settled direct with the agents of the line at Liverpool, according to British law, to the exclusion of proceedings in any other country." A case having been stated for the opinion of his lordship on motion to set aside writ and service,

Held, that the above mentioned clause imported something more than a mutual agreement to refer all claims against defendant to the agent at L., as a condition precedent to the bringing of action; that on a true construction of the clause the proper forum of the action was English, and consequently that plaintiff was not entitled to service out of the jurisdiction.

H. C. Borden, for defendant.

C. D. Macdonald, for plaintiff.

RITCHIE, J. }
In Chambers. }

[Jan. 17.]

JOHNSON *v.* BELL ORGAN CO.

Service out of jurisdiction—Foreign company—Breach within province—Service on company.

Having obtained leave under O. 11, r. 1 (e), plaintiffs served defendants (an English company with a head office registered in London and having no branch office and resident agent in N.S.) at Guelph, Ont., where the principal offices of the company in Canada were, in manner valid by the laws of Ontario. The cause of action was an alleged breach of contract of agency, whereby defendants constituted plaintiffs their sole agents for the sale of goods within the Province, and the breach alleged was a selling through other agents. Defendants appeared under protest and moved to set aside writ and service on the grounds: (1) That the breach did not arise within the jurisdiction; (2) That the service on the company was bad, not having been effected at the head-office in London, in accordance with the provisions of the English Companies' Act, sec. 63.

Held, that on the principle of *Reynold v. Coleman*, 36 C.D. 453, the contract of which a breach was alleged was one that "ought to be performed within the jurisdiction"; also that the real head office of the company being in Guelph, though in compliance with the English Act it had a registered office in London, service at the former place on the principal officer of the company there, was good and effectual service.

W. A. Henry, for defendants

Borden, Q.C., and Covert, for plaintiffs.

RITCHIE, J. }
In Chambers. }

[Jan. 23.]

FALES *v.* FOSTER.

Partnership—Accounting—Receiver—Illegality.

In an action for the winding up of a partnership between plaintiff and defendant, medical practitioners, and for an accounting, it appeared that plaintiff, during a portion of the period of the partnership, was not duly