vice upon the defendants out of the jurisdiction, and setting aside the writ and the service thereof.

Featherston Aylesworth, for the plaintiffs.
Glyn Osler, for the defendants.

LENNOX, J.:—Rule 25 (Rules of 1913) provides: "(1) Service out of Ontario of a writ of summons . . . may be allowed wherever:— . . . (e) The action is founded . . . on a breach within Ontario of a contract, wherever made, which is to be performed within Ontario."

There is a contract in writing, and under its express terms the goods were shipped to the defendants at Edmonton, Alberta, the plaintiffs being at the expense of carriage to that point. Certain payments were made; and the plaintiffs, claiming to recover the balance, were allowed to proceed under the Rule quoted, by order of the Local Judge of this Court at London. This order and the writ issued and the service effected were set aside by the order of the Registrar of this Court, sitting as Master in Chambers. From this order the plaintiffs appealed.

With great respect, I am of opinion that the learned Registrar erred in setting aside the order of the Local Judge. The "breach" upon which the action is founded is non-payment. If the contract provides, either in terms or by implication, for payment outside Ontario, then the order appealed from is right. The contract is not explicit; but it is argued that, as delivery was to be made at Edmonton, and part of the money was to be paid upon delivery of the machinery, and "the balance in two equal payments in thirty and sixty days from the delivery of the machinery," this means that the plaintiffs have to accept payment at Edmonton. I do not think so. I cannot think that either of these expressions, "upon delivery" or "from delivery," performs any office beyond simply defining the time at which payment is to be made. Upon the reading of the contract the place of payment is left absolutely at large. The result, the contract being silent, is, that the debtor must seek out his creditor. The defendants must get the money into the hands of the plaintiffs in London—no posting or depositing or other act falling short of this will discharge them. The converse was the case in Comber v. Leyland, [1898] A.C. 524. There, all that the debtor was to do was by the contract to be done outside the jurisdiction of the Court in England; and hence, as Lord Halsbury pointed out, the debtor there had not to seek out his creditor in England