

bers reserved. *Bain v. University Estates and Farrow, Connor v. West Rydall Limited and Farrow* (1913), 25 O. W. R. 895; 6 O. W. N. 22.

Service out of jurisdiction — *Breach of contract* — *Non-payment for goods sold* — *Place of payment* — *Duty of debtor to seek out creditor* — *Con. Rule 25 (e)* — *Appeal*. — *Lennox, J.*, 25 O. W. R. 471; 5 O. W. N. 453, held, that where certain goods were sold by an Ontario farm, delivery to be made at Edmonton and no provision was made as to the place of payment, that non-payment of the purchase-price was a breach of the contract occurring in Ontario, as it was the debtor's duty to seek out his creditor and make payment, and that therefore issuance of a writ for service out of the jurisdiction was proper. — *Comber v. Leyland*, [1898] A. C. 524, discussed. — *Judgment of Holmested, Registrar, reversed*. *Sup. Ct. Ont. (1st App. Div.)* affirmed above judgment. *Leonard v. Cushing* (1913), 25 O. W. R. 940; 5 O. W. N. 952.

Service out of jurisdiction — *Con. Rules 25 (e) (f) (g)* — *Motion to set aside* — *Irregularities* — *Not set out in notice of motion* — *Con. Rule 219* — *Conditional appearance* — *Reason for*. — *Holmested, K.C.*, refused to set aside the service of a concurrent writ of summons upon defendants holding them properly suable in Ontario on a tort committed here, and refused to allow the entry of a conditional appearance on the ground that the same were only necessary to allow of a motion against the writ, which motion in this case had already been made unsuccessfully. *Wood v. Worth* (1913), 25 O. W. R. 473; 5 O. W. N. 452.

Service out of jurisdiction — *Contract* — *Breaches* — *Assets in Jurisdiction* — *Con. Rule 25 (1) (e), (h)*. — *Holmested* refused motion by defendants to set aside an order allowing service of the writ in Ireland and also the writ and the copy and service thereof. *Auburn Nurseries v. McGredy* (1913), 25 O. W. R. 85; 5 O. W. N. 104. *Britton, J.*, varied above order by permitting defendant to enter a conditional appearance. *Auburn Nurseries Ltd. v. McRedy* (1913), 25 O. W. R. 119; 5 O. W. N. 105.

Service out of jurisdiction — *Rule 25 (e)* — *Contract* — *Place of payment* — *Inference*. — *Kelly, J.*, held, that it is well established that leave to serve out of the jurisdiction a writ of summons or

notice in lieu of a writ is properly granted where, either expressly or by implication, the contract or a part of it is to be performed within the jurisdiction, and there is a breach of it or of that part of it, within the jurisdiction. *Thompson v. Palmer*, [1893] 2 Q. B. 80, followed. *Wolsley Tool & Motor Car Co. v. Humpries* (1913), 25 O. W. R. 65; 5 O. W. N. 72.

Service out of jurisdiction on officers of company — *Company incorporated in Ontario* — *Not British subject* — *Con. Rules 26, 29* — *Insufficient affidavit* — *Leave to file sufficient material nunc pro tunc* — *Costs*. — *Lennox, J.*, held, that a company incorporated within Ontario is not "a British subject" within the meaning of *Con. Rule 29*, and where it must be served with process outside the jurisdiction notice of the writ of summons and not the writ must be served. *Gilpin v. Hazel Jules Cobalt Silver Mining Co.* (1913), 25 O. W. R. 417; 5 O. W. N. 518.

Special endorsement — *Statement of claim delivered as well* — *Irregularity* — *Setting aside* — *Form 5, Rules 56, 111, 112, 127* — *Amendment* — *Affidavit filed with appearance* — *Statement of defence* — *Practice*. — *Master-in-Chambers* struck out a second statement of claim filed, under *Rule 111*, holding that plaintiff must obtain leave before he can file a second statement of claim. *Dunn v. Dominion Bank* (1913), 25 O. W. R. 84; 5 O. W. N. 103.

Special endorsement — *What constitutes liquidated demand* — *Con. Rules 33, 37, 56* — *Appearance* — *Affidavit*. — *Holmested, K.C.*, held, that a special endorsement of a writ of summons was valid which stated the precise sum due making proper allowances for credits to be allowed defendant and that since *Con. Rule 33* (1913), an interest claim, whether payable by way of damages or not, can be added to the main claim. — *McIntyre v. Munn*, 6 O. L. R. 290, distinguished. *Williamson v. Playfair* (1913), 25 O. W. R. 322; 5 O. W. N. 354.

PROHIBITION.

Division Court — *Motion for prohibition* — *Action for return of deposit on purchase of land* — *Rescission of contract* — *Title to land not in question* — *Dismissal of motion*. — *Britton, J.*, dismissed a motion for prohibition to the First Division Court of the County of York in an application for the return of moneys