

MASTER-IN-CHAMBERS.

DECEMBER 10TH, 1913.

WOOD v. WORTH.

5 O. W. N. 452.

*Writ of Summons—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.

Application on behalf of defendants Hortwitz and Zoller, to set aside an order allowing the issue of a concurrent writ for service out of the jurisdiction, the notice of the writ, the copy and service thereof, on them.

F. Aylesworth, for applicants.

H. E. Rose, K.C., for plaintiffs.

HOLMESTED, K.C.:—On the argument of the motion several alleged irregularities to the proceedings were pointed out, but it is a standing rule that he who would object to proceedings on the ground of irregularity must himself be regular. Rule 219 expressly requires that a notice of motion to set aside proceedings for irregularity must specify the irregularity complained of and the objections intended to be insisted on. This the notice of the present motion fails to do, and therefore the defendants do not appear to be in a position to rely on mere irregularities.

Then as regards the merit of the motion.

It appears that Mr. Pickup's affidavit, on which the order for service out of the jurisdiction was based, by some mistake omitted in par. 3 to include the name of the defendant Zoller; but it appears from the statement of claim and the endorsement on the writ, that Zoller equally with the other defendants, is a necessary party to the action against the company and Wagner who are within the jurisdiction.

The action is to restrain the present applicants from parting with certain shares they are alleged to hold in the defendant company; to restrain the defendant company from paying them any dividends on such shares; and to have it declared that these applicants are not the rightful holders