

he came into the custody of the keeper of the Home under said warrant, on said last mentioned day, and was detained on said warrant until Jan. 22nd, 1903, when, being still in custody, the said stipendiary magistrate caused to be delivered to the keeper of the Home a certain other warrant of commitment, under which the prisoner has been detained ever since.

Held, ordering the discharge of the prisoner, that the return to the order was bad, because neither it nor the second commitment shewed that the Justice intended to amend the first warrant, or substitute the second one for it. *In re Elmy Sawyer*, 1 A. & E. 843, followed.

Power, and *Regan*, for prisoner. *Nem con.*

Province of Manitoba.

KING'S BENCH.

Bain, J.]

MAW v. MASSEY-HARRIS Co.

[Nov. 15, 1902.]

Patent of invention—Infringement—Parties—Service out of jurisdiction.

Appeal from an order of the Referee setting aside the service out of the jurisdiction of the plaintiffs' amended statement of claim on the Verity Plow Co. and one Vansickle.

The action in the first place was brought against the Massey-Harris Co., which was duly served within the jurisdiction, claiming that defendant was selling certain ploughs in infringement of patents belonging to the plaintiffs and asking for damages and an injunction against further infringement. In its statement of defence the Massey-Harris Co. alleged that the ploughs in question were purchased from the Verity Plow Co. in Brantford, Ont., and that that Company was duly manufacturing and selling the ploughs under certain patents issued to Vansickle and assigned by him. Plaintiffs then amended their statement of claim by adding the Verity Plow Co. and Vansickle as defendants, and, besides asking for damages and an injunction against all the then defendants, alleged that the invention patented by Vansickle had been appropriated by him from the plaintiff Hancock, and asked that such patent should be declared null and void. The head office of the Plow Co. is in Brantford, Ont., where also Vansickle resides, and it was not alleged that either of these parties had been or was doing anything as to which an injunction could be asked against them in Manitoba; but it was on the ground that they were, under Rule 196 (g) of the King's Bench Act, proper and necessary parties to the action that plaintiffs relied in moving to set aside the Referee's Order.

Held, that the only relief plaintiffs could possibly claim against the added parties, upon the allegations in their amended statement of claim, would be a declaration that their patent was null and void, thus raising