

J. Grayson Smith, for the defendant.

W. H. McFadden, K.C., for the plaintiff.

CARTWRIGHT, K.C., MASTER:—On 21st February last plaintiff obtained an order for service of writ of summons on defendant in Alberta. This was granted on his affidavit alleging that the case came within C. R. 162 (h). Time for appearance was 15 days.

The writ as issued did not conform to the order but included the plaintiff's statement of claim and directed not only appearance but delivery of statement of defence, within the 15 days.

This of course was irregular. See *Kemerer v. Watterson*, 20 O. L. R. 451. Service was apparently effected, as on 17th March defendant's solicitor obtained an *ex parte* order from the local Judge allowing the entry of a conditional appearance and extending the time for delivery of statement of defence for a week from date of order.

On 18th March an appearance was entered for defendant "without prejudice to his right to dispute the jurisdiction of the Court herein."

In consequence of illness of defendant's solicitor the time for defence was enlarged further by plaintiff's solicitor but apparently the defendant's solicitor changed his mind and on 7th inst. served notice to set aside the order of 21st February and all proceedings thereunder as irregular.

The motion is supported by an affidavit which apparently relies on the irregularity already noticed and also on the fact of a writ for service within the province having been issued on 12th December and being still in force, and also that the order for service under C. R. 162 should "specify a claim in the said writ." It was also contended that under clause (h) proof should be given of assets of defendant within the jurisdiction.

As to this last ground that was dealt with in *Kemerer v. Watterson*, *supra*.

The practice has always been to grant the order under that clause (h) if the plaintiff alleges the possession of assets. Then if that is denied the question might be considered, but usually it is disposed of as was done in the *Kemerer Case*. The possession of assets in the province is not denied. But whatever might have been the result if defendant had filed a denial of assets, and moved before