action is determined. I do not think that it was necessary to state this claim in the affidavit. It is clearly ancillary to the claim for cancellation, and would be a not improper enlargement in the statement of claim of a special indorsement claiming the relief of cancellation.

Then as to sub-sec. (e). In Comber v. Leyland, [1898] A. C. 527, Halsbury, L.C., states the meaning of the corresponding English sub-section. . . .

In the present case it is not disputed that the contract was made in Ontario, and the payments were to be made there by plaintiff to the trustee for the benefit of plaintiff's wife. If, then, there had been default by plaintiff and he had gone away to Detroit, he could no doubt be sued here under this sub-section. I cannot, however, see that there is any breach by defendants or either of them. The acts of defendant Mrs. P., relied on by plaintiff as a ground of cancellation are not breaches of any contract made by her or her trustee. . . .

The final result of my consideration of the matter is this. I think the plaintiff comes well within sub-sec. (g). I do not see how it can be argued that McWhinney is not a necessary party to the deed under which he is trustee, and after his taking action as such against plaintiff in the Division Court. But there is the objection of the undoubted irregularity if this sub-section alone is relied on. As to this, if necessary, I do not think that plaintiff should be driven to the useless formality of a second service in England. . . .

But as to (f), I think, for reasons already given, that the order was properly made, even though the claim for injunction was not set out in the affidavit of plaintiff. Having regard to all the facts and that the granting of an order under this Rule is in the discretion of the Court (see per Meredith, C.J., in Phillips v. Malone, 3 O. L. R. 53, and per Lopes, L.J., in De Bernales v. New York Herald, [1893] 2 Q. B. 98 n.) I think the order was rightly made under sub-sec. (f). If necessary for plaintiff to rely on (g), I would validate the service, as no possible injury can have been done to defendants.

The costs will be in the cause, for the reason given in MacKay v. Colonial Investment Co.

The defendants should appear and defend within a reasonable time. The order will be in the same terms as in the MacKay case, if on examination the variation made by the Divisional Court is found appropriate.