

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 of such shares; and, therefore, they are proper and necessary parties to the action under Rule 25 (f) and (g). But they are also proper and necessary parties and entitled to be sued out of the jurisdiction on the ground that the action is founded on a tort committed in Ontario, and the case, therefore, is within Rule 25 (e).

It appears to me, therefore, that the defendants are properly suable in this Province, and that (apart from the irregularities referred to) the order was properly made.

The motion is, therefore, refused. The costs to be in the cause to the plaintiffs, who appear to have rather invited the motion by the way they conducted their proceedings.

The applicants, in the alternative, applied for leave to enter a conditional appearance. According to the English practice, a conditional appearance is merely allowed for the purpose of enabling the defendant to apply to set aside the writ, because, if he entered an absolute appearance, he would waive the right to object to the jurisdiction. If, within a limited time, the motion to set aside the writ is not successfully made, the appearance automatically becomes an absolute appearance. There is nothing in the Rules to indicate that the practice thereunder is to be otherwise. Here the applicants have moved to set aside the writ, and failed; and there appears, therefore, to be no reason for allowing them to enter a conditional appearance.

---

LENNOX, J., IN CHAMBERS.

DECEMBER 10TH, 1913.

LEONARD v. CUSHING.

*Writ of Summons—Service out of the Jurisdiction—Contract—  
Sale of Goods—Place of Payment—Rule 25(e).*

Appeal by the plaintiffs from an order of HOLMESTED, Senior Registrar, in Chambers, setting aside an order of a Local Judge allowing the plaintiffs to issue a writ of summons for ser-