served out of the jurisdiction in cases provided for by the Consolidated Rules:"—Held, that each clause of r. 25 names, not a "condition" of permitting service, but a case in which service may be allowed; the "conditions" are to be found elsewhere, e.g., in rr. 26 to 30; the subss. 6 and 7 of s. 151 add a new case to the cases mentioned in r. 25, and make the procedure laid down in the later rr. applicable to the new case. Quære, whether the new subss. were applicable to the plaintiff company. [Toronto & Niagara Power Co. v. North Toronto, 25 O.L.R. 475, [1912] A.C. 834, distinguished.] Held, that the question whether the call sought to be enforced was one which could be supported apart from the company's special Act, 7 Ed. VII., c. 117 (O.), was one which could not be determined until all the facts were brought out at the trial of the action; and, therefore, the service should not be set aside; but the defendant S. should have leave to enter a conditional appearance, so that he might not be precluded from questioning, at the trial, the jurisdiction of the court. Although it is generally desirable that such questions should be determined at the earliest possible moment, the leave ought to be given in this particular case.

Superior Copper Co. v. Perry, 44 O.L.R. 24.

SERVICE ABROAD—JUDGE'S DISCRETION—REVIEW.

The Act in its scope and purpose is intended to affect procedure only and enacting in subs. 2, of s. 55, that the repeal effected thereby should not affect any jurisdiction, established or confirmed by or under any Act repealed thereby, the words "for any other matter" in clause (h) of O. 11, r. 1, must be construed to include any matter not covered by the preceding clauses of the rule in which the court had jurisdiction at the passing of the Act, and as by C.S.N.B. 1903, c. 111, ss. 52, 53, service abroad might have been authorized in an action such as the one in question, the judge had jurisdiction to make the order and the appeal should be dismissed. Where under clause (h) a judge in the exercise of his discretion on the facts decides that it is in the interest of justice that jurisdiction should be exercised and service abroad authorized, the court on appeal will not interfere with the exercise of such discretion.

Roy v. St. John Lumber Co., 44 N.B.R. 88. Appeal quashed in 29 D.L.R. 12, 53 Can. S.C.R. 310.

OF STATEMENT OF CLAIM—PARTIES OUTSIDE OF JURISDICTION—LEAVE.

Where the defendants without the jurisdiction are necessary or proper parties under clause (G) of r. 204, the plaintiff should issue a statement of claim, serve the defendants without the jurisdiction (see clause (G)), then apply for leave to serve the defendants without the jurisdiction and, having obtained an order, issue a concurrent statement of claim or claims on which the time for defence, or demand of notice as shewn by the endorsements thereon, is that prescribed in the order, and serve the defendants out of the jurisdiction. In the case of a sole defendant or all the defendants residing out of the jurisdiction a statement of claim should be issued and an order then obtained for leave to serve the defendant or defendants out of the jurisdiction and fixing the time for defence or demand of notice, and after obtaining the order, the time for defence or demand of notice and the date of the order should be inserted in the endorsement thereon. In a case in which there is a defendant residing north of the 55th parallel of north latitude and a defendant residing south thereof, the times for defence or demand of notice as fixed by the rule differing, a concurrent statement of claim should be issued.

Parker v. Holloway, 9 W.W.R. 286.

SERVICE OUT OF JURISDICTION—RENEWAL—NEW AVERMENTS.

If a material representation upon which the leave to serve out of the jurisdiction was obtained in the first instance turns out to be unfounded, the plaintiff ought not to be allowed, when an application was made by the defendant to discharge the order for the issue of the writ and service, to set up another and a distinct cause of action which was not before the judge upon the original application.

Boyd v. Dean, 22 D.L.R. 676, 7 W.W.R. 1307, reversing 7 W.W.R. 1208.

INSUFFICIENT AFFIDAVIT—SETTING ASIDE.

In an action by a liquidator of a company, which is being wound up, s. 22 of the Winding-up Act does not prevent a defendant from moving to set aside a concurrent writ of summons and the service thereof. [Mersey Steel & Iron Co. v. Naylor, 9 Q.B.D. 648, applied.] The affidavit filed in support of an application for a concurrent writ of summons for service out of the jurisdiction must shew a good cause of action, otherwise the order may be set aside. [Dickson v. Law, [1895], 2 Ch. 65; Fowler v. Barstowe, 20 Ch.D. 240; Shore v. Hewson, 1 S.L.R. 74, followed.]

Frid Lewis v. Holmes, 8 S.L.R. 182, 31 W.L.R. 918, 8 W.W.R. 1195.

M.R. 62—ENDORSEMENT ON WRIT—SERVICE IN FOREIGN COUNTRY.

Where notice of writ is served on defendant, not a British subject, in a foreign country, endorsement on writ under marginal r. 62 is not necessary.

Lyall Shipbuilding Co. v. Van Hemelryck, [1919] 3 W.W.R. 317.

APPLICATION TO SET ASIDE STATEMENT OF CLAIM FOR SERVICE EX JURIS—PLAINTIFF TO PROVE JURISDICTION.

An order for issue of a statement of claim for service ex juris (and the statement of claim and other proceedings) should be set aside on an application for such purpose unless the plaintiff prove in