

HON. MR. JUSTICE LATCHFORD.

MAY 27TH, 1914.

MARSHALL v. DOMINION MANUFACTURERS.

6 O. W. N. 385.

Process—Writ of Summons—Defendant Outside Jurisdiction—Conditional Appearance—Rules 48 and 25.

Action brought to recover shares from certain persons residing outside the jurisdiction on ground of fraud and misrepresentation and to restrain defendant company, resident within the jurisdiction, from transferring the shares upon its books. One of defendants residing outside of jurisdiction who deposed that he had no assets in Ontario and that the transaction and the obligations arising out of it took place in Quebec did not appear.

LATCHFORD, J., *held*, that under Rule 48 said defendant might enter a conditional appearance since the relief sought against him was not cognate to the injunction sought against the company.

Bain v. University Estates (1914), 26 O. W. R. 64, followed.

Appeal by plaintiff from an order of the Master in Chambers allowing the defendant Patton to enter a conditional appearance under Con. Rule 48.

The plaintiff brought action to recover from certain persons outside this province shares which they obtained from him in the Dominion Mftrs. Ltd. without value or consideration or upon misrepresentation of fact. He further sought to restrain the Dominion Mftrs., whose head office was in Toronto, from transferring upon their books or permitting to be transferred, any such shares.

Grayson Smith, for plaintiff.

H. S. White, for defendant Patton.

HON. MR. JUSTICE LATCHFORD:—All the defendants, except Patton, who resides in New York and has no assets in Ontario, have appeared to the writ and filed defences. Patton filed an affidavit stating that he resides outside the jurisdiction, and that all the matters referred to in the statement of claim and all negotiations in reference to them took place in Montreal. He deposed further that all obligations in regard to the matters mentioned in the statement of claim were to be performed in the province of Quebec and not in Ontario. The Master thereupon made the order appealed from.

So far as the action seeks to prevent by injunction the transfer of the shares within Ontario, it is one in which service may be properly allowed out of Ontario under Con. Rule 25 g. Is the claim against Patton cognate to the claim