

**PRACTICE**—ACTION FOR BREACH OF TRUST—THIRD PARTY NOTICE—CLAIM FOR CONTRIBUTION AGAINST THIRD PARTY OUT OF JURISDICTION—RULES 14, 170 (ONT. RULES 162, 209).

*McCheane v. Gyles* (1902) 1 Ch. 287, was an action brought by a cestui que trust against a surviving trustee for breach of trust in investing the trust fund and claiming payment of the entire fund with interest. The defendant applied for leave to serve with a third party notice the personal representative of one of the deceased trustees from whom he claimed contribution. The proposed third party was resident out of the jurisdiction. Leave was granted and the notice served. The third party then applied to Buckley, J., to rescind the order and set aside the service, and he refused the application. The Court of Appeal (Williams, Romer and Cozens-Hardy, L.JJ.,) however held that the order should be set aside as not being authorized under the Rules as the service of a third party notice out of the jurisdiction can only be properly sanctioned when the subject matter of the claim of the defendant covered by the third party notice, is of such a character that if the claim had been the subject of an independent action commenced by writ, an order for service out of jurisdiction could be properly made under Rule 14 (Ont. Rule 162). If there had been any party within the jurisdiction upon whom the defendant had served a third party notice claiming contribution, then the case might be brought within Rule 14, clause (g). (Ont. Rule 162, (g)), and the service be allowed on the third party out of the jurisdiction, as "a necessary and proper party to an action properly brought against some other person duly served within the jurisdiction." But the court holds that the fact that though the person out of the jurisdiction might have been a necessary or proper party to the plaintiff's action, yet that fact did not entitle the defendant to serve her with a third party notice. In short, the test whether a third party notice can be served out of the jurisdiction, is whether a writ in an action by the defendant, to enforce his claim against the proposed third party could be served out of the jurisdiction. If it could not, then the Rules do not authorize the service of a third party notice out of the jurisdiction.