

cation for payment outside Ontario then the order appealed from is right. The contract is not explicit, but it is argued that as delivery was to be made at Edmonton and part of the money was to be paid upon delivery of machinery and "the balance in 2 equal payments in 30 and 60 days from the delivery of the machinery," that this means that the plaintiffs have to accept payment at Edmonton. I do not think so. I cannot think that either of these "upon delivery" or "from the delivery" perform any office beyond simply defining the time at which payment is to be made. Upon the reading of the contract the place of payment is left absolutely at large. The result of the contract being silent the debtor must seek out his creditor. The defendants must get the money into the hands of the plaintiffs in London—no posting or depositing or other act falling short of this will discharge them. The converse was the case in *Comber v. Leyland*, [1898] A. C. 524. There all that the debtor was to do was by the contract to be done outside the jurisdiction of the Court in England and hence as Lord Halsbury pointed out the debtor there had not to seek out his creditor in England, he had to do just what the contract provided, but he also enunciated the principle which is to govern here, namely, "that where the parties have agreed that something is to be done in this country, some part of the subject-matter of the contract is to be executed within this country, it is a sort of consent of the parties that wherever they may be living, or wherever the contract may have been made, that question may be litigated in this country;" and Lord Herschell at p. 529, points out that the place of performance may be expressly or impliedly provided for by the contract. The importance of this case, however, is that it expressly recognises and reinstates the decision of the English Court of Appeal in *Bell & Co. v. Antwerp, London and Brazil Line*, [1891] 1 Q. B. 103, and *The Eider* (1893), P. 119, both of which go to shew that when a plaintiff is entitled to require payment to be made in this province, and if not made, he is entitled to sue out a writ and serve it under the provisions of Rule 25.

The order appealed from will be set aside, with costs. The defendants will have 10 days to appeal.