at Winnipeg, paying expense of carriage from that place as follows: cash $....., and a note satisfactory to you and payable at your office in Winnipeg for $100, due on the first day of January, 1891; ditto, $90, due on the first day of January, 1892, with interest, etc.; and should you be unable for any reason to fill this order, I will not hold you responsible."

It then went on to provide that the title should remain in the company till the binder was paid for in full and that "this order is not binding on The Patterson & Bro. Co. (Ltd.) until received and ratified by them at Winnipeg."

The plaintiffs accepted the order in October, but the defendant was not notified that they had so accepted or ratified it, and the only communication that he received from the plaintiffs was a letter in the latter part of August, 1890, after his harvest was cut, stating that the binder was held ready for him; before he received his letter the defendant had bought another binder and did not take the plaintiffs' binder from them, or give the notes mentioned in the order. The damages claimed were the amount of the two notes mentioned in the order.

The county judge entered a verdict in favor of the defendant.

*Held*, (1) The order must be regarded as only a notice or proposal from the defendant to purchase the binder, and that until the plaintiffs accepted his offer and in some way or other communicated their acceptance to him there was no contract or agreement between the parties; the plaintiffs accepted the order, but their acceptance was never formally communicated to the defendant.

(2) Though the defendant's order did not fix any time within which it was to be accepted or refused, yet the proposal must be taken to have been open for acceptance for a reasonable time, and an acceptance in August, 1890, of an offer to purchase made in October, 1889, was not an acceptance within a reasonable time. *Hebb's Case*, L.R. 4 Eq. 9, and cases cited in Benjamin on Sales, page 40.

(3) It was not necessary for the defendant, under the circumstances, to notify the plaintiffs that he withdrew his order; for the order having been given and not having been withdrawn by the defendant, it remained open for the plaintiffs' acceptance for a reasonable time, which time having expired the defendant was entitled to assume that the plaintiffs did not intend to accept the order. *Ramsgate Hotel Co.* v. *Goldsmid*, L.R. 1 Ex. 109.

Appeal dismissed with costs.

*Cameron* for the plaintiffs.

*Pitblado* for the defendants.

## *Practice.*

KILLAM, J.] [Oct. 22.

YOUNG *v.* LENG ET AL.

*Examination of foreigner, temporarily within jurisdiction—Identity of parties—Admission of service by attorney.*

Appeal from an order of the Referee. It appeared from the material before the Referee that an order for the examination of the defendant had been made on the 13th day of August, 1891, and that on the same day a copy of such order, and the appointment made in pursuance thereof for four o'clock of the 15th August, 1891, had been served by a clerk of the plaintiff's attorney on a person whom he supposed to be the defendant Whitton, but whom, as appeared from his examination on his affidavit, he did not know personally, and had never seen before. It also appeared that the person served with the order and appointment had been shown the original order and appointment, and had been tendered $1.25 conduct money, which he refused to accept. The only evidence of service of the order and appointment on the defendant's attorney was an admission of service by a firm of attorneys on the back of the order—"service admitted on date." It was objected by the defendant's counsel that (*a*) the material before the court did not show the state of the cause, and that for anything that appeared judgment might have been signed against the other defendant, in which case the defendant whose defence was now sought to be struck out would be excused from attending for examination; (*b*) that there was no evidence of service of a copy of the order and appointment on the defendant's attorney the required 48 hours before the time at which the examination was to be held, as the effect of such admission of service was only to show that they were served before 7 o'clock of the 13th August; (*c*) that there was not sufficient evidence that the person served with the order and appointment was the defendant; and (*d*) that sufficient conduct