

and he claimed on this recount to be returned elected. The respondent objected that the votes cast for the other four candidates, as to whom there was no dispute, must also be recounted, but the Divisional Court (Hawkins and Channell, JJ.) held that this was unnecessary, and that the sixth candidate was entitled to be declared elected, and dismissed the appeal.

PRACTICE—SERVICE OF WRIT—DEFENDANT DOMICILED OUT OF JURISDICTION—
ARGUMENT THAT WRIT MAY BE SERVED ON AGENT IN ENGLAND—ORD. IX. RR.
1, 2—(ONT. RULES, 145, 146).

In *Montgomery v. Liebenthal* (1898) 1 Q.B. 487, the Court of Appeal (Smith, Chitty and Collins, L.JJ.), gave their approval to *Tharsis Sulphur Co. v. Société Industrielle des Meteaux* (1889) 60 L. T. 924. That case had decided that it was competent for litigants to contract themselves out of the Rules as regards the mode of service of process, so long as they do not ask the Court to do something prohibited by the Rules. In the present case the defendants were domiciled or ordinarily resident in Scotland, and the contract upon which the plaintiff sued provided that service of proceedings on the defendants might be made by leaving the same at the office of the London Trade Association, and by posting a copy to the defendants' address in Scotland, which should be deemed good service, any rule of law or equity to the contrary notwithstanding. The writ was served in the manner prescribed by the contract, whereupon the defendants moved before Phillimore, J., to set the service aside, which motion he refused, and the Court of Appeal sustained his decision. The defendants relied on the *British Waggon Co. v. Gray* (1896) 1 Q.B. 35 (noted ante vol. 32, p. 105), but the Court of Appeal held that case to be distinguishable on the ground that there the parties had agreed to something which was expressly prohibited by the Rules. So that the rule on this point may be formulated thus, that it is competent for parties to contract as to the mode of service of process in any case which the Court has jurisdiction to entertain, but it is not competent for them to contract so as to give the Court jurisdiction in any case in which the Rules prohibit it from exercising jurisdiction.