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BRITTON, J.

NOVEMBER 19TH, 1904.

CHAMBERS.

BLACKLEY CO. v. ELITE COSTUME CO.

*Writ of Summons—Service out of Jurisdiction—Place where Contract Broken—Sale of Goods—Place of Payment.*

Appeal by defendants from order of McAndrew, official referee, sitting for the Master in Chambers, dismissing a motion by defendants to set aside an ex parte order for service of the writ of summons upon defendants out of the jurisdiction, and the writ and service, etc.

Joseph Montgomery, for defendants.

R. W. Eyre, for plaintiffs.

BRITTON, J.—The action is . . . for the price of goods or for damages for non-acceptance of goods ordered by defendants at Montreal.

On 8th March, 1904, defendants wrote upon their own blank form an order on plaintiffs for certain goods. This order, when filled out, was given to an agent or traveller of plaintiffs to be by him delivered to defendants at Toronto. The order states the terms of payment . . . 5 per cent. off for cash if paid within 30 days, or a credit of 4 months from 1st June, and the goods were to be delivered to defendants f.o.b. at Toronto.

Plaintiffs have their head office and chief place of business at Toronto. Defendants knew this, and I think it is a fair inference from the evidence as to this transaction that defendants knew that the order as prepared by them was to be sent to Toronto, and that it was optional with plaintiffs whether they accepted the order in the terms of it or not. Plaintiffs did accept the order. Accepting the order in Toronto, for goods to be delivered in Toronto, made this, as I think, an Ontario contract, and, if so, payment should be made to plaintiffs in Ontario.