

[Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

Rose, J.]

[January.

## PERKINS V. MISSISSIPPI.

*Cause of action—Breach of contract—Jurisdiction—  
Rules 45-8 O. J. A.*

An action for damages for breach of contract by the defendants, a corporation in Liverpool, England, in not delivering certain machinery at the railway station nearest to Ottawa.

The writ and statement of claim were served on the defendant's agent in Montreal, and under Rule 48 O. J. A. the plaintiffs now applied for an order allowing the service on the ground that the case was one within Rule 45. The affidavit made and filed by the plaintiff's solicitor set out,

"2. The paper writing shown to me, marked Exhibit A, is a true copy of the statement of claim delivered in this action ;"

"3. This action is brought to recover damages for breach of contract on the part of the defendants in not delivering the machinery, in the statement of claim mentioned, at the railway station nearest to Ottawa under the terms of the contract."

But the affidavit did not state that the deponent knew the fact, either of his own knowledge or on information and belief, nor that the defendants ever entered into a contract with the plaintiff and undertook to deliver the machinery at the railway station nearest to Ottawa.

The bill of lading containing the contract in question provided *inter alia* "that the machinery in question is to be delivered at the port of Montreal unto the G. T. R. Co., by them to be forwarded, upon the conditions above and hereinafter expressed, thence per railway to the station nearest to Ottawa, and at the aforesaid station delivered to order, . . . freight . . . to be paid by the consignees." "That the goods are to be delivered from the ship's deck, when the shipowner's responsibility shall cease. Through goods sent forward by rail are deliverable at the railway station nearest to the place named hereafter." "That any loss, damage, or detention of goods on this through bill of lading for which the carrier is liable must be claimed against the party only in whose possession the goods were when the loss, damage, or detention occurred."

*Held*.—1. That the affidavit did not afford the proof required under Rule 48; 2. That the

bill of lading showed no contract on the part of the defendants to deliver at Ottawa, or the nearest station to Ottawa; nor any contract, the breach of which was made in Ontario, because, if there was such a contract in the bill, force and effect could not be given to the stipulations in it that the shipowner's responsibility should cease when the goods were delivered from the ship's deck, etc., and hence though leave would be given to file further affidavits; such leave was therefore unnecessary.

And, again, if there was a contract, and its terms expressly exempted the defendants from any and all liability for damage for any loss, etc., arising beyond their line, no damage for a breach in this Province would result to the plaintiff, and though technically within Rule 45, sub-sec. c., discretion should (if any exist) be exercised in refusing to allow the service.

In cases of this kind an order allowing service should not be made on an undertaking of the plaintiff's solicitor to prove a cause of action, etc., within the jurisdiction, as it shifts the onus of proof to the plaintiff, and requires him to conduct, it may be, a long and expensive litigation to procure a decision on a point properly raised at the commencement of the action.

*Service disallowed.*

*Lefroy*, for plaintiff.

*Richards*, Q.C., contra.

Mr. Dalton, Q.C.]

[January.

## ADAMS V. BLACKWELL.

*Interpleader—Sheriff.*

S. placed an execution in the sheriff's hands on 11th December, and A. one on the 12th December. On the 20th the landlord put in a claim for rent. The sale took place on the 21st; the sum of \$1,707.06 was realized. On the 24th H. notified the sheriff that he claimed all the moneys in his hands, and not to pay any over to anyone else. On the 27th December the sheriff paid S. in full and took a bond of indemnity.

A motion by the sheriff for an interpleader order against H. and the landlord was refused with costs.

*Aylesworth*, for the sheriff.

*Holman*, for the plaintiff.

*H. J. Scott*, Q.C., for the landlord.