

is not yet forthcoming, but, if it is as plaintiff says, then the contract was made in Ontario, and for the reasons given in *Blackley v. Elite Costume Co.*, 9 O. L. R. 385, 5 O. W. R. 57, this would require the debtor to make payment here, until the contrary was shewn. It would seem, therefore, that the only thing to be done now is to make the same order as was made in the *Blackley* case, and allow the defendants to enter a conditional appearance, with costs in the cause.

No doubt, the Court has a discretion, as Mr. Moss argued, as to allowing service under the Rule. This was decided by the Divisional Court in *Baxter v. Faulkner*, 6 O. W. R. 198 (see judgment of Meredith, C.J., at p. 199). Here, however, the whole or at least the substantial point is, whether the sale made in Scotland by defendants to the agent of the Hees Co., under the agreement with plaintiff and the custom of the business, entitled the plaintiff to his usual commission. The evidence on this point must be found here if the contract was made here. There is no affidavit from defendants here, as there was in the *Baxter* case, so that, so far, they do not deny the plaintiff's story. This would, therefore, seem not to be a case in which the discretion of the Court should send the plaintiff to seek relief in Scotland.

The defendants should plead in a fortnight.

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BRITTON, J.

MARCH 6TH, 1909.

TRIAL.

WINGER v. VILLAGE OF STREETSVILLE.

*Contract — Work and Labour—Concrete Work of Dam and Power-house Built for Municipal Corporation—Change of Site—Engineer—Disputes — Certificate—Evidence—Delay—Defective Work—Notice — Waiver — Dismissal of Contractor—Damages.*

Action for balance of contract price of work done by plaintiff for defendants. Counterclaim for damages for delay, defective work, etc.

W. Proudfoot, K.C., and W. A. Skeans, for plaintiff.

J. Bicknell, K.C., and H. H. Bicknell, for defendants.