

times this question depends upon a finding of fact collateral to the issues in the action, which cannot conveniently be made without a trial upon oral evidence. The conditional appearance is substituted for the practice which prevailed in the common law courts of requiring the plaintiff to prove at the hearing the facts necessary to bring the case within the provisions of the law permitting service out of the jurisdiction and in default to submit to a nonsuit.

Experience has shewn that it is only in rare cases that this or any similar expedient should be resorted to, it being generally desirable to determine the question of jurisdiction once and for all at the earliest possible stage of the action.

Under the circumstances disclosed, the Master exercised an entirely proper discretion in allowing the withdrawal of the conditional appearance.

Upon the cross-appeal, I also think the Master was right. The case can only be brought within Rule 25(g), and that does not apply unless the person within Ontario has been served at the time of the making of the application for an order permitting service out of the jurisdiction. This service not having been effected at the time the notice was served upon the Turnbulls, the order was properly set aside. Such service now having been made, the Master quite properly made a new order permitting fresh service out of Ontario.

As success is divided, costs here and below may be in the cause as between the defendants and the third parties.

The order made by the Master does not contain, as it should, a clause vacating the former irregular order permitting service out of the jurisdiction, and the service made under it. This clause should now be added.

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LENNOX, J.

MARCH 19TH, 1914.

HARRISBURG TRUST CO. v. TRUSTS AND GUARANTEE  
CO.

*Railway Company—Mortgage to Secure Bondholders—Resignation of Trustee—Appointment of New Trustee—Security—Costs.*

Application by the plaintiffs for an order appointing a trustee under a mortgage made by the Woodstock Thames Valley