

(§ II A-13)—PLACE—SALE OF GOODS —
PLACE OF PAYMENT.

The fact that it is stipulated in a contract between a manufacturer in Ontario and his customer in Alberta that delivery should be f.o.b. in Alberta does not imply that the locus of the contract is Alberta, nor fix that province as the place of payment where the contract is silent on that point; and the debtor must seek out his creditor, and is liable to be sued in Ontario for the default in payment occurring in Ontario under R. 25 (e) of the Judicature Rules (Ont.). [Blackley v. Elite Costume Co., 9 O.L.R. 382, followed.]

Leonard v. Cushing, 19 D.L.R. 569, 30 O.L.R. 646.

PLACE—SERVICE OUT OF THE JURISDICTION
—MOTION TO SET ASIDE — IRREGULARITIES.

Wood v. Worth, 5 O.W.N. 452.

PLACE OF SERVICE.

A copy of a writ of summons cannot be left with a person having no authority to receive it for the defendant, in a building which is neither the domicile nor the residence, nor the business office of the defendant. A motion by the defendant asking for dismissal of the action on this ground will be granted with costs reserving the right to sue again.

De Angelis v. Waters, 18 Que. P.R. 103.

If a defendant has been fraudulently moved from the jurisdiction of his domicile, personal service made upon him does not give jurisdiction to the court of the place where it is made.

Lamalice v. Audette, 17 Que. P.R. 456.

EXCEPTION TO FORM—PETITION TO REVISE
JUDGMENT—SERVICE ON PARTNERSHIP—
SAMPLE ROOM—QUE. C.C.P. 139.

A summons of a partnership carrying on business under a firm name should be served at its place of business, and, if the partnership has no place of business, on one of the partners. Such service cannot be made in a sample room, and it will be void if the partners have not acted in such a way as to give rise to the belief that they had a place of business there.

Cerat v. Courville, 16 Que. P.R. 69.

(§ II A-16)—SERVICE OUT OF THE JURISDICTION — ASSETS WITHIN THE JURISDICTION—KING'S BENCH ACT (MAN.)
R. 291.

Service out of the jurisdiction of a statement of claim should not be allowed, under r. 291 of the King's Bench Act (Man.) upon a mere affidavit by the plaintiff stating that the defendant has assets in Manitoba of the value of at least \$200 which may be rendered liable to the judgment in case the plaintiff should recover judgment in the action, without shewing what the assets are, because the rule requires that the possession of such assets must be shewn to the satisfaction of the court or judge, and this implies that the court or judge

should have some information furnished from which to be so satisfied.

Gardner v. Eaton, 17 D.L.R. 637, 24 Man. L.R. 209, 28 W.L.R. 97, 6 W.W.R. 758.

NONRESIDENT—EX JURIS.

In an action for specific performance of an agreement for purchase of land the original purchaser is properly joined as a party, although he is living outside of Canada and has transferred all his interest in the contract and in the land to his co-defendant resident within the jurisdiction, and he may be served outside the jurisdiction with a statement of claim in such an action under the Manitoba King's Bench, r. 201, which authorizes service outside of the jurisdiction whenever any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

Smith v. Ernst, 1 D.L.R. 547, 22 Man. L.R. 317, 20 W.L.R. 353, 1 W.W.R. 839.

SERVICE ON NONRESIDENT.

On an application for leave to serve a writ of summons out of the jurisdiction, it is essential to prove a prima facie cause of action against the defendant upon whom it is proposed to serve the writ ex juris.

Davis v. Wenatchee Valley Fruit Growers Assn., 9 D.L.R. 402, 23 W.L.R. 326, 3 W.W.R. 922.

JOINING DEFENDANT OUT OF JURISDICTION —
FAILURE TO ESTABLISH CLAIM AGAINST
RESIDENT DEFENDANT.

Where leave is given to serve a person out of the jurisdiction as a necessary or proper party defendant to an action brought against a codefendant within the jurisdiction, it is not necessary that the order for service ex juris should contain a condition that in case the action be dismissed against the party within the jurisdiction, the plaintiff shall thereupon consent to its dismissal as to the defendant so served out of the jurisdiction; the latter's rights in that respect, where the service is justified only if the action is properly sustainable against the codefendant within the jurisdiction, can be dealt with at the trial if a plea of want of jurisdiction is raised.

The test for applying that part of the rule for service out of the jurisdiction (Man. K. B. r. 201 (g)) which permits service ex juris upon any person who is a "necessary and proper party to an action properly brought against some person duly served within the jurisdiction" is whether both would have been proper parties to the action had they both been within the jurisdiction, and this without taking into account what may be the result of the trial. [Massey v. Heynes, 21 Q.B.D. 330, applied.]

Swanson v. McArthur, 12 D.L.R. 487, 23 Man. L.R. 84, 24 W.L.R. 1, 4 W.W.R. 231, varying 7 D.L.R. 680.

In an action against two parties, one of whom is out of the jurisdiction, an order may be made for service of the writ upon