

if the original defendants should succeed in their contention, the added defendants should be declared liable by reason of their prospectus. The clause of Rule 25 relied upon by the plaintiffs was (g). The added defendants were said to be proper parties to the action as brought. The criterion to be applied was Rule 67, relating to the joinder of parties and of causes of action. All parties may be joined as defendants against whom a claim for relief may be made, if the right to relief arises from the same transaction or occurrence. Here the action was upon two distinct contracts, between different parties—perhaps in widely different circumstances—and the claim of the plaintiffs against the original defendants was the opposite of the claim against the added defendants.

The English Rule is not the same as ours; and a late English case which goes further than any other on this subject—*Oesterreichische Export A.G. v. British Indemnity Insurance Co. Limited*, [1914] 2 K.B. 747—does not justify the joinder here, even bearing in mind the wider provisions of Rule 67.

The right to allow service out of Ontario is one which must be exercised in accordance with a sound judicial discretion. The right is not absolute in any case; and, when it is sought to justify an order under Rule 25 (g) and Rule 67, in addition to the general discretion possessed by the Court, there is the express provision of Rule 67 (2), enabling the Court to deal with the case if the joinder is deemed oppressive or unfair.

The plaintiffs are well within their rights in seeking to enforce their contract with an Ontario company in an Ontario Court; but no sound principle can justify the bringing in Ontario of an action by a Massachusetts company against defendants in Scotland and England upon a contract neither made nor to be performed within Ontario.

The appeal should be allowed and the service out of the jurisdiction set aside with costs to be paid by the plaintiffs to the added defendants forthwith and to the original defendants in any event of the action.