

ducing the plaintiffs to enter into the contract of sale; that defendants were British subjects resident in Winnipeg in the Province of Manitoba, and it was a proper case for service out of Ontario under the rules of Court.

The order gave leave to issue the writ and the writ was issued. The affidavit, order and writ are dated respectively the 9th March, 1914.

In support of the motion the defendants read a certificate of the state of the cause from which it appears that the affidavit on which the order was made was not filed until the 31st March, 1914. An affidavit was also filed by defendants verifying a copy of the writ issued and apparently served, and stating also that no statement of claim was served therewith.

The certificate already referred to shews that no statement of claim has yet been filed. The writ makes no reference to any fraudulent representation but is endorsed with a bare claim to have the agreement cancelled or set aside and the moneys paid thereunder refunded. A statement of claim was produced by the plaintiffs on the motion purporting to be dated the 18th March, 1914, in which express allegations of fraudulent representations are set forth. The grounds set out in the notice of motion are:

(1) The affidavit on which the order was obtained did not disclose facts sufficient to justify the making of the order and was not filed as required by and was not according to the rules. The affidavit was not filed before being used as required by Rule 298. It did not contain a statement that in the belief of the deponent the applicants had "a right to the relief claimed" as required by Rule 26.

(2) That the writ issued was not justified by the order. If the material, however, disclosed a proper ground for asking leave to issue the writ, Rule 32 would probably apply and make it unnecessary that "the precise ground of complaint" should be set forth in the endorsement.

(3) That the writ had not endorsed upon it a minute shewing that it was issued in pursuance of the order.

(4) That the writ is not a specially endorsed writ and a statement of claim should have been served herewith as provided by Rule 28.

On the hearing of the motion the plaintiffs asked leave to file a supplementary affidavit to the effect that in the opinion of the deponent, the plaintiffs have a right to the