

although the contract is made in England and according to English law, the debtor must seek out his creditor to pay him, that rule of law is to be excluded, and the question to be determined solely upon the construction of the contract itself—taking into consideration, of course, the facts which existed when it was made.

The words “according to its terms” (in the English Rule) were probably, I think, introduced so as to make it necessary to shew that in the entering into the contract it was in the contemplation of the parties that it should be performed within the jurisdiction, so that the party to it resident out of the jurisdiction must be taken to have given “a sort of consent,” as Lord Halsbury puts it in *Comber v. Leyland*, p. 527, that wherever he may be living, or wherever the contract may have been made, any question as to the thing agreed to be done may be litigated within the jurisdiction.

The omission of the words “according to the terms thereof” from our Rule, I am inclined to think leaves it open, in construing the contract in order to determine whether it is to be performed within Ontario, to apply the rule of our law that the debtor must seek out his creditor to pay him, unless the application of it is inconsistent with the terms of the contract, construing it in the light of the facts which existed when it was made.

But, if the rule of our law is to be excluded, upon the facts of this case I am of opinion that it was in the contemplation of the parties when the contract was made that payment for the goods which were ordered by defendants should be made at Toronto, and that the obligation to pay was, therefore, one to be performed within Ontario.

The circumstance that plaintiffs desired defendants to close the transaction with the agent in Germany of the manufacturers of the goods, and that this agent proposed to draw on defendants for the price, is immaterial, I think, and can afford no light as to the meaning of the contract, settlement with the agent not having been in the contemplation of the parties when the contract was made, and being expressly repudiated by defendants themselves as a thing which it was not incumbent on them to do.

For these reasons, I am of opinion that plaintiffs made out a *prima facie* case as to the contract, and that there had been a breach within Ontario of the obligation which, under it, rested on defendants to accept and pay for the goods, and to be performed within Ontario; that their application was rightly refused; and that this appeal therefore fails and should be dismissed with costs.