

within the jurisdiction to the value of \$200. The plaintiff relied also upon clause (e) of Rule 25, and founded his action upon a breach within Ontario of the contract, or, in the alternative, on a tort committed therein. The mere fact that the plaintiff sustained his injury in Ontario was not conclusive that the wrong of the defendants was committed here. The tort was in manufacturing in Quebec the alleged defective machine. The moment it left their possession in Quebec, the tort was committed. The final stage—the collapse of the machine, and the injury to the plaintiff—was the evidence of the wrong. Reference to *Anderson v. Nobels Explosives Co.*, 12 O.L.R. 644. In reference to the claim by the plaintiff for breach of warranty on the sale of the machine, the Master thought that the contract entered into between the parties was to be performed in Ontario, but on this point the parties were at large. It was true that payment was to be made in the Province of Quebec; but that was only a term of the contract. The delivery was to be made to the defendants' agents in Ontario, subject to inspection. Where the place of the performance of the contract is in controversy between the parties, the issue should not be determined in a summary way on affidavits, but the defendants' proper course is to enter a conditional appearance, and then raise the question of jurisdiction in their pleadings: *Canadian Radiator Co. v. Cuthbertson*, 9 O.L.R. 126. Order made directing that the writ of summons be amended by striking out the alternative claim for damages for tort, and that the statement of claim be amended to conform with the amendment endorsed on the writ; that the defendants be at liberty to enter a conditional appearance; and that costs of the application be costs in the cause. H. S. White, for the defendants. McGregor Young, K.C., for the plaintiff.

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#### CORRECTION.

In *REID v. AULL*, ante 85, at p. 86, line 20, delete the word "no."