

RIDDELL, J., said that it was admitted that the defendant entered into a contract with the plaintiffs, dated at Delhi, whereby he agreed to become selling agent for them in Northern Ontario, receiving a commission of 8 per cent.; that he received quantities of goods from the plaintiffs; that, instead of receiving cash at all times, the usual practice was for him to order sufficient goods to cover his commission account; and a short time previous to his dismissal he had ordered and received a quantity of goods—those for the price of which the action was brought.

Where a defendant does not attend at the trial, and it is not made clearly to appear that any injustice will be done by allowing the judgment to stand, the Court ought not to grant a prohibition: *Re Canadian Oil Companies v. McConnell* (1912), 27 O.L.R. 549, at pp. 550. 551.

So far as the plaintiffs' claim was concerned, the defendant's own admission shewed that the amount was payable; as to the counterclaim, it was brought into the Court by the defendant himself, and, in any case, the Court had jurisdiction to try it.

The defendant contended that payment for the goods was to be made at Sudbury; but the place of payment is where the creditor is—the debtor must seek his creditor, and not vice versa. All the elements giving the cause of action must have occurred in the local jurisdiction of a Division Court foreign to the debtor's residence: *Re Doolittle v. Electrical Maintenance and Construction Co.* (1902), 3 O.L.R. 460; *Re Taylor v. Reid* (1906), 13 O.L.R. 205. Here this was so.

Even if it could be argued that the delivery was not at Delhi, that was a fact to be determined by the Judge in the lower Court; and not till he found that the delivery was elsewhere than in Delhi would his jurisdiction be ousted.

It was immaterial where the agency contract was executed—the contract sued on was the implied contract to pay for goods sold and delivered.

*Motion dismissed with costs.*