

Rules authorising a declaration that the affidavit constituted a defence. Rule 56, in a certain event, constitutes it a defence; but that event had not arisen; and Rule 112 appeared to require that, when that event had not arisen, a defence should be delivered as in the ordinary course of an action. In the circumstances, the defendants should have an extension of time to file a defence, say for a week from the 7th October. W. B. Milliken, for the defendants. G. Grant, for the plaintiff.

AUBURN NURSERIES LIMITED v. MCGREY—HOLMESTED, SENIOR
REGISTRAR, IN CHAMBERS—OCT. 9.

Writ of Summons—Service out of the Jurisdiction—Contract—Breaches—Assets in Jurisdiction—Con. Rule 25 (1) (e), (h).—Motion by the defendant to set aside an order allowing service of the writ of summons in Ireland and to set aside the writ and the copy and service thereof. The motion was heard by the Senior Registrar, sitting for the Master in Chambers. The plaintiffs made a contract with the defendant in Ireland for the purchase of a certain quantity of roses. They were informed by the defendant that the freight must be paid through to destination, and he demanded from the plaintiffs money to enable him to pay this freight. The plaintiffs complied with this demand, and sent the defendant, as they alleged, \$977.23 on account. The roses were consigned to the plaintiffs at, it is alleged, the wrong place, viz., Queenston, instead of Oakville. The learned Registrar said that two breaches of the contract were practically admitted: (1) non-payment of freight, as to which he referred to *Orient Co. Limited v. Brekke & Howlid*, [1913] 1 K.B. 531; (2) excessive amount of goods, viz., 1,000 trees more than ordered, as to which he cited *Shipton Anderson & Co. v. Weil Brothers*, [1912] 1 K.B. 574. In these circumstances, the plaintiffs refused to accept the goods, and claimed to recover: (1) the amount advanced as above-mentioned; (2) freight and duty paid by them in respect of the roses; and (3) for cartage, labour, and fertilizer expended by them on the roses, by arrangement with the defendant. The plaintiffs were not, therefore, suing on the contract or for breach of the contract. They said in effect: "True it is, there was a contract between us and the defendant, but he failed to carry it out, and we are suing to recover money which we have paid, and for