

Snider was the sole defendant named in the writ as being the Canadian executor of the maker of the notes who is deceased. By order made on the application of this defendant in presence of the solicitor for the plaintiff and of Charles F. Malsbury and the Central Trust & S. D. Co., executors in the United States of the said Thos. Albert Snider, these last-named parties were added as defendants on 13th February, 1913. The order recites an undertaking by their solicitor to accept service of the writ and to enter an appearance and an agreement to waive the issuing of a writ for service out of the jurisdiction.

It is said that this order was made at the instance and request of the added defendants; but that, if it were the fact, is not stated in the order. At all events the order stands, it has never been appealed from, and for weal or woe the defendants are parties defendants to the action, and have attorned to the jurisdiction of the Court.

These defendants having thus been made parties to the action and attorned to the jurisdiction of the Court, are parties for all purposes and cannot now object to any question being raised in the action which might be legitimately raised had they been resident within the jurisdiction of the Court. A defendant cannot appear in an action and disappear at his pleasure. He cannot say I will appear and contest this question, but I will disappear if the plaintiff raises any other question.

The only question therefore, it appears to me, is this. If the defendants were resident within the jurisdiction and served with the writ could they object to the variation from the endorsement of the writ which is disclosed in the statement of claim. Rule 109 contemplates that a statement of claim may alter, modify or extend the relief claimed by the endorsement on a writ, because it provides that where the statement does this, the plaintiff shall not be entitled to judgment in default of defence unless the statement of defence is served personally, or in pursuance of an order for substitutional service. The object of the Rule is obvious. A plaintiff may vary his claim as endorsed on the writ, by his statement of claim (where the writ is not specially endorsed within the present Rules) but if he does so, he must give the defendant due notice of the change. As long as the defendant has due notice of the variation, that is all that is requisite, as it would be obviously unfair and unreasonable