

J. P. MacGregor, for the plaintiff.

E. P. Brown, for the defendants.

LOGIE, J., in a written judgment, said that two preliminary objections to the hearing of the appeal were taken.

The first was that the notice of appeal did not specify the grounds intended to be argued, as directed by Rule 218. The learned Judge was of opinion that the grounds of appeal were sufficiently indicated by the words in the notice of appeal, "upon the grounds set forth and the material filed before the Master in Chambers."

The second objection was that the appeal was launched too late and that the notice of appeal did not specify the day on which it was returnable. In fact, the copy of the notice of appeal served on the defendants' solicitors did not contain a date upon which the notice was returnable; the notice was dated the 27th August, and was served in time. Rule 505 (2) states that the appeal shall be by motion, on notice served within 4 days and returnable within 10 days after the decision complained of. It could not be said that the notice served was good; and, if an extension of time under Rule 176 was sought as an indulgence, it should not be granted.

Reference to *In re Manchester Economic Building Society* (1883), 24 Ch. D. 488; *Union Bank of Canada v. Rideau Lumber Co.* (1900), 19 P.R. 106.

There were no merits in the appeal. It was admitted by counsel for the plaintiff that, if the case of the defendant the Alcemo Manufacturing Company could not be brought within clause (h) of Rule 25, there could be no remedy against it in Ontario.

For that defendant company it was urged that there was no contract between it and the plaintiff, and that it had no assets, or at all events no sufficient assets, in the Province of Ontario.

The plaintiff's claim against this defendant company was for damages for misrepresentation and breach of warranty. No misrepresentation was shewn. The warranty alleged was said to have been inscribed upon a package of the goods of this defendant company shewn by one Yeo to the plaintiff before he had any dealings with either of the defendant companies. It was alleged but not shewn that Yeo was at this time the agent of the Alcemo company. He was in fact then an independent jobber, but afterwards was the president of the Auto Accessories Company, a co-defendant. It was abundantly clear that the plaintiff never had any contract, express or implied, with the Alcemo company—his contract was with the Auto Accessories Company. The plaintiff's evidence disclosed no warranty given to him by the