

sec. 16 of that Act; that sec. 14 is not to be found in the English Act; and that that section, so far as a sale is concerned, covers in part the same ground as sec. 16.

The order must provide for payment into Court of the cash payment, and the mortgage for the unpaid purchase money must be made to the Accountant. The costs of all parties will be paid out of the purchase money, and the costs of the petitioners will be taxed as between solicitor and client.

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DIVISIONAL COURT.

APRIL 16TH, 1910.

**\*STANDARD CONSTRUCTION CO. v. WALLBERG.**

*Conditional Appearance—Rule 173—Refusal of Leave—Discretion—Appeal—Defendant Residing out of Ontario—Service out of Ontario—Con. Rule 162—Place of Making Contract—Jurisdiction.*

An appeal by the defendant Wallberg from an order of FALCONBRIDGE, C.J.K.B., ante 608, affirming an order of the Master in Chambers, ante 527, dismissing the appellant's motion for leave to enter a conditional appearance.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

M. Lockhart Gordon, for the appellant.

G. F. McFarland, for the plaintiffs.

MIDDLETON, J.:—A contractual liability is personal, and therefore ambulatory with the person, so that an Ontario Court has jurisdiction, no matter where the contract was made, or between whom, if service can be effected. Service can be made upon any defendant within Ontario, even though he be a foreigner only temporarily within the jurisdiction. Whether the service can be made out of Ontario is a question which for Ontario Courts must be determined by the statutes and statutory Rules in force here. Whether such statutes and Rules are within the principles of international comity is a question which the Courts of Ontario can not entertain: *Western, etc., Co. v. Perez*, [1891] 1 Q. B. 304. A foreign Court will, no doubt, regard a judgment obtained against a non-resident as entitled to no extra-territorial recognition: *Sirdar Gurdial Singh v. Rajah of Faridkote*, [1894] A. C. 670; *Emanuel v. Symons*, [1908] 1 K. B. 302; *Deacon v. Chadwick*, 1 O. L. R. 346. But the validity of the judgment in the

\* This case will be reported in the Ontario Law Reports.