

We have come to the conclusion that there should be a new trial, and the costs of the trial, and of this motion, will be costs to the defendants in any event.

The plaintiff is granted leave to amend as he may be advised.

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SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

FEBRUARY 26TH, 1914.

LEONARD v. CUSHING.

5 O. W. N. 952.

*Writ of Summons—Service out of Jurisdiction—Breach of Contract—Non-Payment for Goods Sold — Place of Payment—Duty of Debtor to Seek out Creditor—Con. Rule 25 (e)—Appeal.*

LENNOX, J., 25 O. W. R. 471; 5 O. W. N. 453, *held*, that where certain goods were sold by an Ontario firm, delivery to be made at Edmonton and no provision was made as to the place of payment, that non-payment of the purchase-price was a breach of the contract occurring in Ontario, as it was the debtor's duty to seek out his creditor and make payment, and that therefore issuance of a writ for service out of the jurisdiction was proper.

*Comber v. Leyland*, [1898] A. C. 524, discussed.

Judgment of HOLMESTED, Registrar, reversed.

SUP. CT. ONT. (1st App. Div.) affirmed above judgment.

Appeal by the defendants from an order of HON. MR. JUSTICE LENNOX, 25 O. W. R. 471.

Appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WILLIAM MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE HODGINS.

Glyn Osler for the defendants, appellants.

Fetherston Aylesworth for the plaintiffs, respondents.

Their Lordships' judgment was delivered by

HON. SIR WILLIAM MEREDITH, C.J.O. (v.v.):—We think it is not necessary to hear the respondent's counsel.

Mr. Osler has presented his case with ability and said everything that can be said in support of it. I do not understand him to contend that the legal effect of the agreement was not that the subsequent payments were to be made at the place of business of the respondents in London.