

C. M. Herzlich, for the plaintiff.

M. L. Gordon, for the defendant Albert B. Brull.

MULOCK, C.J.Ex., in a written judgment, said that it was **not** competent for the plaintiff to serve the defendant out of the jurisdiction with a writ issued for service within the jurisdiction; but the plaintiff's contention in effect was, that what he might **not** do directly, he might do indirectly. That view could **not** be assented to. Where a defendant is out of the jurisdiction, you cannot effect substituted service upon him of a writ which the plaintiff is not entitled to serve personally: *Field v. Bennett* (1886), 56 L.J.Q.B. 89; *Fry v. Moore* (1889), 23 Q.B.D. 395.

The Master's order was right, and this appeal should be dismissed with costs.

MASTEN, J., IN CHAMBERS.

NOVEMBER 22ND, 1916.

CANADIAN HEATING AND VENTILATING CO. LIMITED
v. T. EATON CO. LIMITED AND GUELPH STOVE CO.
LIMITED.

Appeal—Extension of Time for Appealing from Judgment of Trial Judge to Appellate Division—Special Circumstances—Rule 176—Intention of Officer of Appellant Company to Bring Question of Appealing before Directors—Delay—Excuse for—Leave to Appeal—Terms.

Motion by the plaintiff company for leave to appeal and to extend the time for appealing to the Appellate Division of the Supreme Court of Ontario from the judgment of SUTHERLAND, J., of the 14th July, 1916, dismissing the action: 10 O.W.N. 439.

The application was made under Rule 176.

H. W. Mickle, for the plaintiff company.

H. S. White, for the defendant the Guelph Stove Company Limited.

The plaintiff did not desire to appeal as against the other defendant.

MASTEN, J., in a written judgment, said that the appeal should have been brought not later than the 15th September. The excuse was that the chief officer of the plaintiff company was