

In these circumstances, if plaintiff were obliged, in order to maintain this action against defendant alone, to shew, at least *prima facie*, that he is the sole debtor, the action could not be allowed to proceed. But where the joint debtor not sued is a foreigner, this is not requisite.

If the joint debtor were a resident in this province, in the absence of special circumstances (*Robinson v. Geisel*, [1894] 2 Q. B. 685), defendant might, as of right, demand that the action should not proceed in the absence of such co-debtor: *Pilley v. Robinson*, 20 Q. B. D. 155. But where the alleged joint debtor resides out of the jurisdiction, the defendant has not this right: *Wilson v. Belcarres Brook S. S. Co.*, [1893] 1 Q. B. 422. In *City of Toronto v. Shields*, 8 U. C. R. 133, the Court of Queen's Bench held that the Upper Canada statutes 59 Geo. III. ch. 25 and 7 Wm. IV. ch. 3, sec. 6, required that a plea in abatement for non-joinder should shew that the party non-joined was within the jurisdiction. The right conferred upon a plaintiff to proceed in the absence of a foreign co-debtor of the defendant, by the English statute, 3 & 4 Wm. IV. ch. 42, sec. 8, corresponding to the Upper Canada statutes cited, was held to be substantive in character, and as such not to be affected by the abolition of pleas in abatement by the Judicature Act. The decision in *Wilson v. Belcarres Brook S. S. Co.* is, therefore, directly applicable in Ontario, and would appear to entitle plaintiff to succeed in an action against the present defendant, sued alone, upon establishing his liability, though in conjunction with other non-residents who may be jointly liable with him. The fact that in the English case the defendants were resident within the jurisdiction, whereas the present defendant is not resident in Ontario, does not affect the applicability of the English decision, which proceeds entirely upon the statutory bar to a plea in abatement for non-joinder of a non-resident co-debtor. The reason for this statutory bar is given in the preamble to 59 Geo. III. ch. 25, viz., a possible great delay of justice where a joint obligor resides out of the jurisdiction and cannot be served with process.

This reason for the relief given to plaintiffs by the statute applies whether the defendant be a resident or non-resident. This is the more apparent when it is remembered that Rule 223, enabling a plaintiff to sue members of a partnership in their firm name, and to effect service on the partnership by