

petition. In view of the finding of the trial Judge, when disposing of the action, I am inclined to think that it is not open now to the company to object to the jurisdiction. The judgment is reported in 22 O.L.R. 130, and at p. 143, the trial Judge says: "The fact that the third parties here plead in their statement of defence to the jurisdiction does not help them—their election was made on entering their appearance, and, that appearance standing, they cannot take a new position."

However, upon the merits of this application, with some hesitation I have come to the conclusion that the prayer of the petition cannot be granted.

The notice of lien on which the petitioners mainly rely is contained in a letter dated the 20th September, 1909, directed by the petitioners to the solicitor in Vancouver from whom they had originally received instructions to appear for the defendant (Bostock). I quote from his letter: "Up to date we have not been paid any fees by Mr. Bostock, and we would not care, under the circumstances, to incur any further costs unless our bill up to the present is paid and we are assured that the balance will be paid." In a letter dated the following day, they also say: "We wish that you would in the meantime take up the question of our costs with Mr. Bostock, and write us as to whom we are to look for payment of our costs."

The Vancouver solicitor apparently took the matter up with Mr. Bostock, who, on the 28th September, 1909, wrote directly to the petitioners, and I quote from the letter: "I went into the question of your account with Mr. Russell; and, although I contend that the Canadian Canning Company should pay this, yet your good selves had nothing at all to do with any action between the Canadian Canning Company and myself with regard to the account; and I, accordingly, enclose herewith my cheque for \$51.61, which kindly acknowledge, and I shall be further obliged if you will let me have your account."

This correspondence was, of course, long before the recovery of the judgment. No subsequent notice of any claim for lien as to costs appears to have been given either to the solicitor in Vancouver or to the Canadian Canning Company. In fact, no specific notice to the latter appears to have been given at any time.

Subsequent to the judgment on the 24th January, 1911, and while the reference to ascertain the damages was pending, the defendant (Bostock) made a settlement with the Canadian Canning Company, in so far as their liability in connection with the said action was concerned. This document states as follows: