

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH
DECISIONS.

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PRACTICE—JURISDICTION—SERVICE OUT OF JURISDICTION—APPLICATION TO ENFORCE AWARD—ARBITRATION ACT, 1889, s. 12—(R.S.O. c. 62, s. 13)—(ONT. RULE, 162).

In *Rasch v. Wulfert* (1904) 1 K.B. 118, the plaintiffs and defendants who were foreigners resident abroad, had made an agreement to refer disputes between them to arbitration. The plaintiffs had under the agreement appointed an arbitrator and obtained an award in their favour, the defendants having refused to be parties; the plaintiffs now applied under the Arbitration Act of 1889, s. 12 (R.S.O. c. 62, s. 13) for leave to serve the defendants out of the jurisdiction with a summons for leave to enforce the award. The master to whom the application was first made granted leave, but on the return of the summons dismissed the application on the ground that there was no jurisdiction to give leave to serve the summons out of the jurisdiction. On appeal to Ridley, J., that learned judge held there was jurisdiction and reversed the Master's order, but on appeal to the Court of Appeal (Collins, M.R., and Mathew, L.J.) the order of Ridley, J., was reversed. On the appeal it was argued that the award having been made within the jurisdiction it must be presumed that the defendants had submitted to the jurisdiction; but the Master of the Rolls says "A mere contract to refer disputes does not seem to me to amount for this purpose to a submission in fact to the jurisdiction of the arbitration here. The person so submitting may be under a contractual obligation to submit, but I do not think that he therefore can be considered to have actually submitted to the arbitration here so as to give an English court jurisdiction over him," and, as the Court of Appeal held, there was no statute or rule authorizing the service of such a proceeding out of the jurisdiction.