

the jurisdiction. The plaintiff's affidavit on which the order was obtained stated that it was proposed to bring an action against two defendants, one of whom, McWhinney, resided in Ontario, and the other, Sarah Ann Postlethwaite, in England. The proposed action was to set aside an indenture under seal dated 31st March, 1903, to which plaintiff and defendants were all parties.

The writ of summons having been issued and served on the defendant Sarah Ann Postlethwaite in England, she made a motion to set aside all the proceedings against her, on the grounds: (1) that the material on which the order of 24th June was made was insufficient; and (2) that this case does not come within any of the clauses of Rule 162.

S. B. Woods, for applicant.

R. B. Beaumont, for plaintiff.

THE MASTER.—The motion was first supported on the assumption that plaintiff was invoking only the provisions of sub-sec. (g) of Rule 162. It was conclusively demonstrated that the order could not be sustained under that clause as a matter of right. Whatever doubts may have been entertained or suggested as to the meaning of the words "duly served," it is now clear from the decision in *Collins v. North British Co.*, [1894] 3 Ch. 228, that these words require an action to have been already commenced and service effected on the party resident within the jurisdiction. . . . *MacKay v. Colonial Investment Co.*, 4 O. L. R. 577, 1 O. W. R. 569, 592, 646; *Muir's Annual Practice*, 1903, p. 184.

Mr. Beaumont conceded that he could not rely on this ground, but he contended that he was clearly within the provisions of sub-secs. (f) and (e).

As to these I agree with the plaintiff.

Mr. Woods argued as to the claim of plaintiff for an injunction, that it was not mentioned in the affidavit of plaintiff on which the order of 24th June was granted, and. . . . that this was to be regarded with suspicion, citing *De Bernales v. New York Herald*, [1893] 2 Q. B. 97n. . . . There the claim for an injunction was added only by way of amendment. The action as originally framed was in respect of an alleged libel, and the claim for an injunction was considered an afterthought to bring the case within the Rule. Here, however, the claim for an injunction seems very appropriate, in view of the proceedings taken by defendant McWhinney against plaintiff in a Division Court, which proceedings are stayed by the indulgence of that Court until the present