

MIDDLETON, J., IN CHAMBERS.

JANUARY 22ND, 1911.

## HAY v. SUTHERLAND.

*Writ of Summons—Service out of the Jurisdiction—Con. Rule 162 (g)—Joinder of Parties.*

Appeal by the defendant Sutherland from an order of the Master in Chambers dismissing the appellant's motion to set aside an ex parte order authorizing service upon the appellant, out of the jurisdiction, of the writ of summons, and to set aside the writ and the service and all proceedings based thereon.

Grayson Smith, for the appellant.

McGregor Young, K.C., for the plaintiff.

MIDDLETON, J.:—A case is within clause (g) of Con. Rule 162 when it appears that the defendants are properly joined. The question of joinder must be determined quite apart from the residence of the defendants, and entirely upon the Rules regulating the joinder of parties.

If an action is properly brought against two persons who are both within the jurisdiction, it can be said that either is a proper party to an action properly brought against the other; and so, when either is out of the jurisdiction, an order may be made for service upon him, provided his co-defendant is first served.

This construction of the Rule has been invariably adopted. Appeal dismissed with costs to the plaintiff in any event.

MIDDLETON, J.

JANUARY 23RD, 1912.

## GREER v. GREER.

*Stay of Proceedings—Action Pending in Foreign Court—Parties and Causes of Action not Identical—Trust—Account—Payment—Pleading—Statement of Claim—Motion to Strike out.*

A motion by the defendant A. B. Greer to stay this action pending the trial of an action in Arkansas; and, in the alternative, for an order striking out paragraphs 9c and 9d of the statement of claim, on the ground that, according to the law of Arkansas, the plaintiff had no right to maintain this action.