

MIDDLETON, J., in a written opinion, said that the defendant Sill was frequently to be found in the Toronto Club; but, when service of the writ of summons upon him was attempted, he could not be served; and an order for substituted service was made, allowing the writ to be served upon a resident of Toronto for the defendant Sill. Sill moved to set aside the service as a nullity; it was said that he was a foreigner, and was served with the writ, instead of notice of the writ.

This missed the whole point; for, if Sill was, at the time of service, in Ontario, then service on him of a writ for service in Ontario was good.

The cases shew that the service of a writ in Ontario substitutionally, when the defendant is at the time out of Ontario, is not regular, and possibly is a nullity: *Hewitson v. Fabre* (1888), 21 Q.B.D. 6; *Kemp v. Necchi* (1913), 134 L.T. Jo. 454; cf. *Fry v. Moore* (1889), 23 Q.B.D. 395; but in the case in hand the defendant, at most, had shewn that he was a United States citizen and usually resided at Detroit. He might, for all that was shewn, have been in Ontario.

The solicitor for the defendant Sill in his affidavit said that he was informed that on the 3rd June Sill "was at and residing at Detroit." This was not enough, for two reasons. The deponent swore on information only and did not state his belief. Secondly, as Detroit is just across the river from Ontario, the fact that the defendant Sill was at Detroit on the 3rd did not prove that he may not have been within Ontario on the same day.

All this was very narrow and technical, but the motion was itself based upon the merest technicality, and was devoid of any semblance of merit; so any weapon might be fairly employed against it.

There should not be the delay and expense of an appeal to discuss these questions further.

Motion refused; costs to the plaintiff in any event. An appearance should be entered in a week, or judgment for default.

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MIDDLETON, J.

JUNE 26TH, 1916.

RE TANNER.

*Will—Construction—"Homestead Property"—Inclusion of small Parcel Separated by Road from Farm.*

Motion by the Inspector of Prisons and Public Charities, representing the estate of the devisee Roland, a lunatic, for an