

filing a statement of claim pursuant to sec. 31 of the Mechanics' and Wage-Earners' Lien Act, R. S. O. ch. 153, to set aside as against them the judgment pronounced after trial by the Judge of the County Court of Essex, and all proceedings subsequent to the filing of the statement of claim, upon the ground that the statement of claim was improperly served upon the applicants out of the jurisdiction, and, even if that were permissible, no order allowing that mode of service was made. The applicants were not British subjects, and resided in the State of Michigan.

J. H. Moss, for applicants.

W. M. Douglas, K.C., for plaintiff.

MEREDITH, C.J.—The Courts of this Province have no inherent jurisdiction to allow service of any proceeding to be effected out of Ontario; jurisdiction for that purpose must be conferred by statutory authority.

Under the English Judicature Act and Rules the provisions for allowing service out of the jurisdiction form a complete code of procedure, and the English Courts have no jurisdiction to allow service out of England except in cases which come within these provisions, and therefore the service of a statement of claim filed as the initial step in an action may not be so served, it not being mentioned as one of the proceedings which the Court may allow to be served out of its jurisdiction (*In re Busfield*, 32 Ch. D. 123); and there are numerous cases in England to the same effect. See also *Re Confederation Life Association and Cordingly*, 19 P. R. 16, 89.

It follows that, unless our Judicature Act and Rules differ from those of England, there is no authority in the Courts of this Province to allow service out of Ontario of a statement of claim filed as the initial step in an action.

It was argued that Con. Rule 3 has the effect of making the provisions of the Rules as to service of the writ of summons applicable to service of any proceeding by which an action is commenced. That Rule, however, is limited to matters of practice; the matter in question here is not one of practice, but of jurisdiction: *Attorney-General v. Sillem*, 11 H. L. Cas. 703; *In re Anglo-African S. S. Co.*, 32 Ch. D. 348.

[History and review of the Ontario legislation respecting service out of the jurisdiction.]

Service out of Ontario is dealt with by the existing Rules 162-167. They do not extend, in terms at all events, to service of a statement of claim such as that in question, al-