

I think that the Master of Titles has, notwithstanding some of the expressions in his judgment, intended to decide, and has decided, that the effect of the order in question is to determine, in the proceedings before him, that issue in favour of the appellant here. I am of opinion that he is right in so holding. He is dealing with the rights of the parties before him and if he finds that the claimant is estopped or barred of record in regard to the right he is setting up, the Master can dismiss the claim; and this he has done. He has in fact disposed of the matter on the merits, and no good purpose would be served by again re-mitting it to him. The appeal should therefore be allowed with costs and the formal order objected to vacated and set aside.

HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN and HON. MR. JUSTICE MAGEE agreed.

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HON. MR. JUSTICE BRITTON.

OCTOBER 22ND, 1913.

AUBURN NURSERIES LTD. v. McREDY.

5 O. W. N. 165.

*Process—Writ of Summons—Service out of the Jurisdiction—Contract—Breaches—Assets in Jurisdiction — Conditional Appearance—Rule 48.*

BRITTON, J., varied order of Mr. Holmested, 25 O. W. R. 85, by permitting defendant to enter a conditional appearance.

Appeal by defendants from order of Geo. S. Holmested, Esq., K.C., acting for the Master-in-Chambers, dismissing an application of the defendants to set aside the order allowing service out of the jurisdiction, of the writ of summons and service of the same. See ante 85.

H. W. Mickle, for appeal.

A. C. MacMaster, for plaintiffs.

HON. MR. JUSTICE BRITTON:—I have read the correspondence between the parties, and looked at all the cases cited. Upon the facts disclosed, and upon the authorities, this case is one in which, pursuant to rule 48, leave should be given to the defendants to enter a conditional appearance.