

It is a well known saying that actions speak louder than words. The whole conduct of the parties themselves and of the mother and step-father of plaintiff, and of defendant towards them, are, in my judgment, matters which must be left to the jury under the direction of the Judge at the trial. After hearing plaintiff's case, the presiding Judge will have to say whether or not there is any case to go to the jury—any evidence on which 12 or 10 reasonable men could find that there was a breach by defendant before action. To him I must leave it to decide.

The motion is therefore dismissed with costs in the cause to plaintiff.

I have not dealt with the first ground of the motion, for the reasons given in *Knapp v. Carley*, 7 O. L. R. 409, 3 O. W. R. 187.

JANUARY 11TH, 1905.

DIVISIONAL COURT.

BLACKLEY CO. v. ELITE COSTUME CO.

Writ of Summons—Service out of Jurisdiction—Contract—Breach—Place where Contract Broken—Sale of Goods—Place of Payment.

Appeal by defendants from order of BRITTON, J., 4 O. W. R. 417, affirming order of McAndrew, official referee, sitting for the Master in Chambers, dismissing motion by appellants to set aside an order made by the Master in Chambers, upon the ex parte application of plaintiffs, allowing service of the writ of summons to be effected out of the jurisdiction, and to set aside the writ and the service of it upon appellants at Montreal, in the Province of Quebec.

George Kerr and Joseph Montgomery, for appellants.

R. W. Eyre and E. E. Wallace, for plaintiffs.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.), was delivered by

MEREDITH, C.J.—By his order the official referee gave leave to defendants to enter a conditional appearance, but they are not satisfied with that leave and have brought the present appeal. . . .

Defendants are an incorporated company carrying on business and having their head office in Montreal, and plaintiffs a firm carrying on business in Toronto.

On 12th March, 1904, defendants gave an order in writing to an agent of plaintiffs for certain goods described in the order. The order was given to the agent at Montreal,