of such shares, and therefore, they are proper and necessary parties to the action under Rule 25 (f) and (g). But they are also proper and necessary parties and entitled to be sued out of the jurisdiction on the ground that the action is founded on a tort committed in Ontario and the case therefore is within Rule 25 (e).

It appears to me therefore that the defendants are properly suable in this province and that (apart from the irregularities which were referred to) the order was properly made.

The motion is therefore refused. The costs to be in the cause to the plaintiffs, who appear to have rather invited the motion by the way they conducted their proceedings.

The applicants in the alternative applied for leave to enter a conditional appearance. According to the English practice appearance is merely allowed for the purpose of enabling the defendant to apply to set aside the writ, because if he entered an absolute appearance he would waive the right to object to the jurisdiction. If within a limited time the motion to set aside the writ is not successfully made the appearance automatically becomes an absolute appearance. There is nothing in the Rules to indicate that the practice thereunder is to be otherwise. Here the applicants have moved to set aside the writ and failed and there appears therefore to be no reason for allowing them to enter a conditional appearance.

HON. MR. JUSTICE LATCHFORD. DECEMBER 5TH, 1913.

GAGNON v. HAILEYBURY.

5 O. W. N. 435.

Municipal Corporations—Negligence—Delay on Part of Fire Brigade in Answering Call—Duty merely Permissive—Absence of Liability.

LATCHFORD, J., *held*, that a municipality is not liable in damages for the non-performance or inefficient performance of purely permissive duties, so that they are not liable for the tardy manner in which their fire brigade answers an alarm of fire.

Quesnel v. *Emard*, 8 D. L. R. 537, followed.

Hesketh v. *Toronto*, 25 A. R. 449, distinguished.

J. Lorn McDougall, for plaintiff.

F. A. Day, for defendants.