tiff's other alleged cause of action is upon a collateral agreement. Apart from the legal difficulty in the plaintiff's way, the agreement sought to be set up was too vague and indefinite to found an action upon. The appeal should be allowed. In the unfortunate situation which has arisen, the best disposition which can be made of the case, is to strike out the counterclaim without costs, and without prejudice to any action the defendant may take to enforce such counterclaim, or any claim he may have against the plaintiff by reason of the lease, and to allow the appeal without costs and dismiss the action without costs.

RIDDELL, J., agreed in this disposition of the case, giving written reasons, in which he referred to the following authorities: Cowan v. Milbourn, L.R. 2 Ex. 230; Leake on Contracts, 5th ed., pp. 550, 551; Adam v. Newbigging (1888), 13 App. Cas. 308.

FALCONBRIDGE, C.J.K.B., agreed in the result.

DIVISIONAL COURT. DECEMBER 21ST, 1912.

CONNOR v. PRINCESS THEATRE.

Trespass—Savage Monkey—Kept in Yard Adjoining Theatre where Performance Given—Liability of Proprietors of Theatre—Yard no Part of Theatre Premises.

Appeal by the plaintiff from the judgment of the Senior Judge of the County of Wentworth, of October 23rd, 1912, in an action for damages resulting from the bite of a monkey, which, it is alleged was brought upon the premises of the defendants used in connection with their theatre.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

A. M. Lewis, for the plaintiff.

H. McKenna, for the defendants.

LATCHFORD, J.:—If I put in motion a dangerous thing, as if I let loose a dangerous animal, and leave to hazard what may happen, I am answerable in trespass: Lord Ellenborough, C.J., in Leame v. Bray (1803), 3 East 593, 595.

It is not essential to liability that the defendant should