

curred, to justify the plaintiffs in bringing the action to have that question tested and to have a conditional appearance entered by the defendants, if they so desire: and I repeat what I said during the argument, that, if the facts are as suggested by counsel upon both sides, they might well have been spread out in form so that the Court could have acted upon them. I do not feel bound to act upon the documents above as they appear here; and, taking the insurance policy, issued apparently in London, to my mind it is obviously issued upon a form which shews that there was some person to whom the defendants were issuing it, and upon which they recognise that person as doing business in Toronto. Apparently, after it had been issued on the 20th January, 1909, in London, it passed to this person on the 8th February, 1909, in Toronto. Was that person the agent of the company of Lloyds? Or was he an agent of the bank? I do not know; but, upon the document issued by them, they recognised such a person. The natural inference was, that he was an agent of the defendants. That, of course, might be rebutted by the fact; and counsel for the defendants suggests that the fact is contrary to the inference I draw from the document itself; but that denial is not in such form that I can act upon it.

As I entertain a doubt as to where the contract was made or where the breach occurred, I think the proper order to make is that made in this case by the Master.

The appeal will be dismissed with costs to the plaintiffs in any event.

(This result is noted, ante 805.)

On the 12th March, 1912, an order was made by MIDDLETON, J., in Chambers, allowing the defendants to appeal to a Divisional Court from the order of CLUTE, J.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and SUTHERLAND, JJ.

Shirley Denison, K.C., for the defendants.

J. Bicknell, K.C., and M. L. Gordon, for the plaintiffs.

The judgment of the Court was delivered orally, at the close of the argument, by FALCONBRIDGE, C.J.:—We are all agreed that Mr. Denison has presented this appeal with great skill and ingenuity. We are further agreed that it is neither necessary nor desirable that we should reserve the case merely for the purpose of adding to the literature on the subject.