

been no appeal—said: “Where interlocutory applications have been disposed of, but the costs have been reserved, such costs are not to be mentioned in the judgment or order, or allowed on taxation, without the special directions of the Judge. So far as I am personally concerned, I shall in future deal with great jealousy with such applications; and shall not after judgment has been passed and entered allow costs reserved, and not mentioned at the trial—except under very special circumstances.”

On either of the above grounds I think there should be no order on this application.

---

BRITTON, J.

MARCH 5TH, 1906.

CHAMBERS.

DOMINION CANISTER CO. v. LAMOUREUX.

*Writ of Summons—Service out of Jurisdiction—Contract—Sale of Goods—Action for Price—Place of Payment—Conditional Appearance.*

Appeal by defendant from order of Master in Chambers, ante 272, dismissing motion by defendant to set aside order for service of writ of summons out of the jurisdiction, and service made in pursuance thereof, in an action for the price of goods sold and delivered, but allowing defendant to enter a conditional appearance.

W. J. Boland, for defendant.

J. L. Counsell, Hamilton, for plaintiffs.

BRITTON, J.:—It cannot be satisfactorily determined by me whether there was or was not a new contract in 1904 which is the foundation of the present action. The case, as it stands, is, in my opinion, governed by *Blackley v. Elite Costume Co.*, 9 O. L. R. 382, 5 O. W. R. 57. Defendant is amply protected by the order allowing a conditional appearance. Plaintiffs must at the trial establish a cause of action upon which they are entitled to sue in Ontario, and they are apparently good for costs if they do not succeed.

Appeal dismissed with costs in cause to plaintiffs.