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CARTWRIGHT, MASTER.

SEPTEMBER 7TH, 1906.

CHAMBERS.

McRAE v. BALLANTYNE.

Writ of Summons—Service out of Jurisdiction—Motion to Set aside — Grounds—Res Judicata—Premature Action—Discretion—Costs.

Motion by defendants Ballantyne and Lowell & Christmas to set aside an order for service on them out of the jurisdiction of the writ of summons and statement of claim, and to set aside the service effected thereunder.

A. W. Ballantyne, for applicants.

Grayson Smith, for plaintiff.

THE MASTER:—This action is a result of that of Gillard v. McKinnon, the facts of which are to be found in 6 O. W. R. 365. It was tried at the Stratford Spring Assizes, before Britton, J., and a jury, and resulted in a verdict and judgment for plaintiff.

This is now in appeal before a Divisional Court. On 6th June the action of McRae v. Ballantyne was commenced, the plaintiffs herein being all those who were defendants in Gillard v. McKinnon, except Duncan J. McKinnon, who is a defendant in this second action.

It is brought against Ballantyne, Lowell & Christmas, and Duncan J. McKinnon, to recover damages for alleged deceit and fraud on their part whereby the plaintiffs were induced to make the note sued on in Gillard v. McKinnon.