

trial a cause of action within the jurisdiction or else to suffer nonsuit; but the Ontario Rule 173, providing for conditional appearance, favours the former equitable practice, which was to enter such appearance and raise the want of jurisdiction by plea or demurrer. That is better also in that it severs the issue as to jurisdiction from the other defences, so that in a case where there will be great expense in the trial of all the merits, this preliminary matter as to jurisdiction may be ordered to be tried separately. . . .

That is the proper course to take on this appeal—not to try the disputed question of jurisdiction on affidavits, but to permit defendants to enter a conditional appearance and thereafter raise the contention on the record.

Appeal dismissed; costs in cause to plaintiffs.

BOYD, C.

JANUARY 14TH, 1905.

CHAMBERS.

REX v. MAY.

Criminal Law—Bail—Estreat—Certificate of Non-appearance—Informality—Criminal Code—Forms—Motion to Vacate Estreat—Delay—Action Taken on Certificate.

Application by two sureties to vacate the estreat of the recognizance of bail given by them on behalf of defendants on 12th January, 1899, because there was no certificate of non-appearance indorsed on the recognizance, pursuant to sec. 589 of the Criminal Code.

L. F. Heyd, K.C., for applicants.

R. C. Clute, K.C., for the Crown.

BOYD, C.—There has been great delay (not explained) in making this motion, and unless the objection is substantial it should not be favoured.

What appears on the bail-piece is this: "The accused was directed to appear to answer the charge before the police magistrate of St. Thomas, John B. Davidson, on 16th January, 1899, at 10 a.m." And on the back thereof is written: "Defendant and his sureties having been called and not appearing, let this bond be estreated. 16th Jany., 1899. J. B. D."

The initials appear to be those of the police magistrate, who has signed his name in full at the bottom of the recognizance, and the information given as to non-appearance is substantially what is expressed in the form of certificate given in the Code: see form R. in schedule.