

motion to set aside service of writ of summons out of the jurisdiction, and order permitting such service.

G. T. Blackstock, K.C., for appellants.

G. H. Watson, K.C., for plaintiffs.

BOYD, C.:—Upon the affidavits and material before me it does not appear expedient to deal with all the large questions raised by the appellants. The consideration of them will more fitly come up at a later stage. It should be open for the appellants to raise the question when the pleadings are complete as to the cause of action alleged being *res judicata* as to the co-defendant McKinnon, and if this is made to appear it should be also open to the appellants to raise the question as to the competency of the Court to deal with the cause of action as it is to be made out against the other defendants. At present it seems to me that the order to serve out of the jurisdiction is maintainable because one of the defendants, McKinnon, is within the jurisdiction—but if the action is vexatious as to him, this reason for upholding jurisdiction as to the others disappears. I would also allow the appellants to enter a conditional appearance. It is no doubt premature to discuss the method of trial, but it may be found not to be a fit case for a jury.

Order accordingly and costs in cause.

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SEPTEMBER 24TH, 1906.

DIVISIONAL COURT.

LUCAS v. PETTIT.

*Animals—Escape of Bees from Defendant's Land—Injury to Property of Plaintiff—Negligence—Scienter—Liability—Findings of Jury.*

Motion by defendant to set aside the findings of the jury at the trial of this action before MAGEE, J., and the judgment entered for plaintiff thereon, and to enter judgment for defendant.

The action was brought for injuries caused by bees of defendant.

G. Lynch-Staunton, K.C., for defendant.

W. S. McBrayne, Hamilton, for plaintiff.