

are of comparatively trivial character: sec. 226. I am not disposed to disagree with the Master's conclusions, particularly having regard to the fact that this is a municipal election, good only for a year, of which the greater part has now elapsed.

Appeal dismissed without costs.

OCTOBER 6TH, 1902.

DIVISIONAL COURT.

MACKAY v. COLONIAL INVESTMENT AND LOAN  
CO.

*Writ of Summons—Service out of Jurisdiction—Foreign Company—  
Transfer of Assets in Ontario to Ontario Company—Action to  
Set aside—Conditional Appearance—Res Judicata.*

An appeal by the defendants from the order of STREET, J., *ante* 592, affirming the order of the Master in Chambers, *ante* 569, refusing defendants' application to set aside proceedings on the ground of want of jurisdiction in the Ontario Court to entertain the action; and an appeal by the defendants, also, from so much of the order of BOYD C., of 26th September, 1902, allowing defendants to enter a conditional appearance, as directed that it should be without prejudice to any right that plaintiffs might have to set up *res judicata*.

The appeal was heard by MEREDITH, C.J., MACMAHON, J., LOUNT, J.

A. B. Aylesworth, K.C., for the defendants the Colonial Investment and Loan Company.

W. M. Douglas, K.C., for the other defendants.

C. D. Scott, for plaintiffs.

THE COURT varied the order of BOYD, C., by striking out the part objected to, and varied the orders of Street, J., and the Master by inserting a clause to the effect that the dismissal of the defendants' motion is to be without prejudice to defendants' right to plead want of jurisdiction.

Costs of appeal to be costs in the cause.