

order allowing plaintiffs to issue a writ of summons for service on defendants at Liverpool, England, the writ issued pursuant thereto, the service thereof, and all subsequent proceedings.

J. T. Small, for defendants.

W. E. Middleton, for plaintiffs.

MACLAREN, J.A.— . . . It is urged that the contract was a sale by sample; that defendants had a right to inspect the goods on their arrival at Liverpool; and that the breach of contract, if any, was in defendants' refusal to accept at Liverpool. When ordering the goods defendants directed them to be shipped by Leyland line steamer from Boston, they paying freight. I can find nothing in the contract to take this case out of the general rule, that the property would pass to the purchaser on the delivery of the goods on board the vessel at Boston, and that an action would thereupon lie for goods sold and delivered. [Atkinson v. Bell, 8 B. & C. 277, Philpotts v. Evans, 5 M. & W. 475, and Scott v. Melady, 27 A. R. 193, distinguished.] The purchasers were, no doubt, entitled to inspect the goods before accepting. But even in case of a sale by sample, prima facie the place of delivery is the place for inspection: Perkins v. Bell, [1893] 1 Q. B. at p. 197. There is nothing in the contract in this case to dislodge this presumption.

The affidavit on which the order for service was granted sufficiently disclosed the facts to comply with Rule 163, although it did not shew that defendants refused to receive the goods at Liverpool, but shipped them back to plaintiffs at Toronto, and that they were lying there at the time the affidavit was made, nor the facts regarding the English copyright of one of the pictures sold, and that the defendants had paid for all the goods which they retained.

The Master properly exercised his discretion in favour of an Ontario action. [Lopes v. Chavarri, W. N. 1901, p. 115, distinguished.]

Appeal dismissed with costs to plaintiffs in any event.

FALCONBRIDGE, C.J.

OCTOBER 27TH, 1903.

TRIAL.

SINCLAIR v. McNEIL.

*Ejectment—Trust—Statute of Frauds—Title by Possession—Costs.*

Action of ejectment tried at Goderich.

W. Proudfoot, K.C., and G. F. Blair, Brussels, for plaintiff.

J. P. Mabee, K.C., for defendant.