

But in truth no very alarming wrong is done whether the one or the other mode of practice is adopted. It is more important to have it settled one way or other. The more convenient and more correct way to settle it is as I have indicated, and, therefore, the appeal will be allowed, and the statement of claim set aside; but all costs of the motion and appeal will be costs in the action, and if required, the plaintiff's time for replying or amending will be enlarged for three weeks from to-day.

OSLER, J.A.

DECEMBER 18TH, 1903.

CHAMBERS.

GIBSON v. LE TEMPS PUBLISHING CO.

Partnership—Judgment against—Application for Leave to Issue Execution against Partners—Issue—Foreign Judgment—Corporation—Service—Manager of Business.

Appeal by Sara Moffet from an order of MAC TAVISH, local Judge at Ottawa, made on the 10th November, 1903, on the application of the plaintiff for leave to issue execution against Flavien Moffet and Sara Moffet as members of the defendant partnership, on the judgment recovered against the partnership, directing an issue to be tried between Gibson as plaintiff and the Moffets as defendants, the questions to be tried being whether the Moffets were members of the partnership, and whether they were liable to have execution issued against them, or either of them, on the judgment.

The appeal was heard by OSLER, J.A., sitting in Chambers for a Judge of the High Court.

W. H. Barry, Ottawa, for appellant.

D. J. McDougal, Ottawa, for plaintiff.

OSLER, J.A.—The grounds of the appeal shortly stated are: (1) that the judgment sought to be enforced is null and void by reason of there never having been any service of the writ upon the defendants in the action, or upon the Moffets, or the alleged partnership; (2) that the judgment was recovered upon an affidavit which alleges no ground of action against the defendants in the action as a partnership, or