

**The**  
**Ontario Weekly Notes**

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HIGH COURT DIVISION.

KELLY, J., IN CHAMBERS.

DECEMBER 13TH, 1920.

BRENNER & CO. v. F. E. SMITH LIMITED.

*Writ of Summons—Service on Foreign Corporation-defendant by  
Serving Person in Ontario—Rule 23—Evidence—No Agent or  
Representative in Ontario.*

An appeal by the defendant company from an order of the Master in Chambers dismissing an application to set aside the service of the writ of summons.

T. N. Phelan, for the defendant company.

H. H. Shaver, for the plaintiffs.

KELLY, J., in a written judgment, said that the writ of summons described the defendant company as of the city of Montreal, which is not in Ontario. There was evidence that the defendant company's head-office and place of business were in Montreal; that it had no place of business in Ontario, and had no person who, as its agent in Ontario, carried on any business of or for it. The plain inference was, that there was no person sufficiently representing the defendant company in this Province on whom the writ of summons could be served, according to Rule 23: *Murphy v. Phoenix Bridge Co.* (1899), 18 P.R. 495, 502; *Ingersoll Packing Co. Limited v. New York Central and Hudson River R.R. Co. and Cunard S.S. Co. Limited* (1918), 42 O.L.R. 330.

The appeal should be allowed with costs and the application made to the Master granted with costs.

At the close of the argument it was mentioned that the plaintiffs had gone into bankruptcy. The appeal was disposed of upon its merits, notwithstanding that there was no evidence of leave to proceed being obtained.