

Court of Appeal. The action was brought against a firm of Andre & Co., and the writ was served on one Rath, who was alleged to be in charge of the business of the firm, and who, the plaintiff claimed, was a partner. Mr. Rath denied he was a partner, or in charge of the business, and he obtained leave to enter "a conditional appearance," unless the plaintiff would undertake not to seek to make him liable as a partner of the firm of Andre & Co. The Court of Appeal (Lord Esher, M.R., and Fry, L.J.) were of opinion that the rules warranted no such procedure. That the party served must either appear or not appear, he cannot half appear. It does not appear to us, however, that the Court of Appeal has quite satisfactorily removed what appears to us to be the dilemma in which Rath was placed. He was served with the writ; he was not named in it as a member of the firm. But the plaintiff claimed he was a member of the firm. The service on him was therefore somewhat equivocal, and it was difficult for him to know whether he was served as being an alleged partner, or merely as a person in control of the business. He might be in control of the business without being a partner. And yet upon a judgment against a firm, the rules allow execution to issue against persons who have been served as partners and have failed to appear. Rath might be met, if he did appear, with the statement that he was not served as a partner, and therefore had no right to appear; but if he did not appear, then the plaintiff might turn round and say he had been served with the writ as a partner, and had not appeared, and was therefore liable to execution. It appears to us that the rules place a man served under such circumstances in a somewhat awkward position. How is a person to know whether or not he is "served as a partner" in a case where his name does not appear on the writ? Perhaps the proper explanation of the rules is, that a man cannot be said to be "served as a partner" unless he is on the face of the writ named as a partner.

ATTACHMENT FOR CONTEMPT OF COURT—CRIMINAL MATTER.

The only case in the Probate Division to which it seems necessary to direct attention is *O'Shea v. O'Shea*, 15 P.D., 59, in which the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.) determined that where, in a civil proceeding, an application is made against a person, not a party to the action, for contempt of court in publishing comments calculated to prejudice the fair trial of the action, it is "a criminal cause or matter," and therefore no appeal from the order made upon such an application will lie to the Court of Appeal; in which respect it differs from an attachment to enforce obedience to an order made in a civil action or proceeding, which is appealable.

LIGHT AND AIR—RAILWAY COMPANY—SALE OF SURPLUS LAND WITH HOUSE THEREON—IMPLIED COVENANT WITH PURCHASER.

Myers v. Catterson, 43 Chy.D., 470, though perhaps not strictly an authority in Ontario, is, nevertheless, an instructive case as to the implied obligation which a vendor assumes not to do or permit anything to be done on land he retains which will interfere with the enjoyment by the purchaser of the property he