

answerable for loss or damage to any vessel in tow of their tugs (which were specified by name), whether occasioned by the negligence of their servants or otherwise. The tug in question, which was not one of those specified, was known by the plaintiff, who was a director of the defendant company, to have been chartered by the defendant company. This tug being hired by the plaintiff from the defendant company to tow the plaintiff's vessel, the collision took place in respect of which the action was brought, and it was held that the plaintiff must be taken to have impliedly agreed to employ the tug on the same terms as the other tugs of the company, and that his claim was therefore barred by the condition. By the terms of the charter party the defendants were to appoint a captain as pilot, and all damages were to be for charterer's account. The collision was occasioned solely by the negligence of the defendant's captain; and it was held that an action *in rem* would not lie against the tug, because the maritime lien arising from collision is not absolute, and the owners not being personally liable for this collision, and the charterers being exempted by the terms of their contract with the plaintiff, the *prima facie* liability of the tug was rebutted.

PARTNERSHIP—SHARE OF PROFITS—ADVANCE TO CARRY ON BUSINESS—GARNISHEE ORDER—EQUITABLE CHARGE—NOTICE—PRIORITY.

Proceeding now to the cases in the Chancery Division, the first to be noted is *Badeley v. Consolidated Bank*, 38 Chy. D. 238, which is an appeal from the judgment of Stirling, J., 34 Chy. D. 536, noted *ante* vol. 23, p. 189. The Court of Appeal (Cotton, Lindley and Bowen L.JJ.), affirmed the judge below in holding that a garnishee order only binds the beneficial interests of the debtor in the debt attached, and that when a valid charge has been created on the debt attached prior to the garnishee order, the charge is entitled to priority over the garnishee order, even though notice has not been previously given by the chargee to the garnishee; but their lordships reverse the decision of Stirling, J., in finding that an advance made to a railway contractor upon an assignment of his contract and all his materials by way of security, and upon a covenant by the borrower to repay all advances within six months, and to pay the lender ten per cent. of the profits, constituted the lender a partner with the borrower. The Court of Appeal being of opinion that, although participation in profits is strong evidence, it is not conclusive evidence of a partnership; and that the question of partnership or no partnership must be decided by the intention of the parties, to be ascertained by the contents of the written instruments, if any, and the conduct of the parties, and that the stipulations in the deed. The expressions in the correspondence in the present case, were all consistent with the relations of the parties being lender and borrower, and not partners.

PLEADING—STRIKING OUT PLEADINGS AS EMBARRASSING AND UNNECESSARY—ORD. 19, R. 27—(ONT. C. R. 423)—EXERCISE OF DISCRETION.

*Knowles v. Roberts*, 38 Chy. D. 263, was an action to enforce a compromise, in which the plaintiff set out in his statement of claim the allegations as to his