Osler, J.A.] GIBSON *v.* LE TEMPS PUBLISHING CO. [Dec. 18, 1903.

Partnership—Foreign judgment against corporation—Action on, against partnership — Recovery of judgment—Estoppel—Service — Execution against partners—Rule 228—Issue.

A judgment was recovered by the plaintiff in a superior court of the Province of Quebec against certain defendants sued and described as "La Compagnie de Publication Le Temps, a body politic and corporate, having its principal office and place of business in the city of Ottawa, in the Province of Ontario," in an action for libel. There was no incorporated company in Ontario of that name, but a partnership firm of that name was registered in Ottawa, the partners being F. M. and his wife. This action was begun in Ontario by a writ specially indorsed with a claim for the amount of the Quebec judgment. The writ was served upon F.V.M., the manager of Le Temps Publishing Co., but without the notice in writing required by Rule 224, informing him in what capacity he was served. Le Temps Publishing Co. appeared by the name mentioned in the writ as if sued as a corporation, and the plaintiff obtained a summary judgment against the defendants, and afterwards an order to examine F.M. as "one of the registered partners of the defendants, otherwise called La Campagnie de Publication Le Temps." Upon a motion by the plaintiff for leave to issue execution against F. M. and his wife as members of the defendant partnership, an issue was directed to be tried to determine whether they were members of the partnership and liable to have execution issued against them.

Held, that it must be taken that the judgment in this jurisdiction was recovered against a partnership firm, and not against a corporation. If the Quebec judgment was to be regarded as one against a corporation and therefore not capable of being the foundation of an action thereon against a partnership firm of the same name, that objection should have been taken, but was not, on the motion for summary judgment. On that motion it might have been shewn, but was not, that there never had been an effective service of the writ upon the firm, or the firm might have moved to set aside the faulty service on the manager. Neither of these courses having been taken, there was an impeached judgment against a firm, which could not be attacked in a collateral proceeding; and it was open to the plaintiff to apply under part (2) of Rule 228 for leave to issue execution against F. M. and his wife as members of the firm; and as they disputed their liability, the question, not of the validity of the judgment, but of their liability as members of the firm to execution thereon, should be determined by the issue directed.

W. H. Barry, for Sara Moffat. *D. J. McDougal*, for plaintiff.