

Some of the grounds of objection to the order of Britton, J., were that the defendants were sued as a corporation on a judgment in the Province of Quebec against them as such, and they had appeared in and defended this action as a corporation, and the plaintiff was estopped from denying that they were a corporation and from taking proceedings against them as a partnership, or otherwise than as a corporation.

The next proceeding was that now in question, by which an issue has been directed to try whether the persons appealing are members of the partnership firm of *Le Temps Publishing Co.*

Several of the objections are similar to those taken on former appeals, and in addition it is contended that service of the writ in the present action having been made upon the manager of the partnership (if defendants are sued as a partnership) and no notice in writing having been then given to him pursuant to Rule 224, informing Flavien V. Moffet whether he was served as a partner or as a person having the control or management of the partnership business, or in both characters, the judgment in the action was irregular or void, etc., and the order in question was made without jurisdiction.

From the affidavits and papers before me on the present appeal, it appears that on the 4th November, 1901, a judgment was recovered in the Superior Court of the district of Ottawa, in 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." The action was for a libel alleged to have been published in the issue of the then defendants' newspaper of the 3rd June, 1901. It was a defended action, but it does not appear whether the quality of the defendants as a corporation was brought in question. A partnership by the name of *La Compagnie de Publication Le Temps* was registered in the registry office of the city of Ottawa in August, 1900, the partners in which, according to the subscribed declaration, were Flavien Moffet and Sara Moffet, his wife. The partnership was dissolved about January, 1903.

It must be assumed that there is no incorporated company in Ontario of the name of *La Compagnie de Publication Le Temps*, or its English equivalent, as no affidavit on the subject has been filed, though leave was given to do so. Mrs. Sara Moffet makes an affidavit in which she states that she signed a declaration of co-partnership with her husband about