

serving one member of the firm, does not apply to partnerships not carrying on business within the jurisdiction. Such partners must be sued in their individual names, and each member of the firm so sued must be personally served with process: *Western National Bank v. Percy*, [1891] 1 Q. B. 304.

Moreover, the statutes in terms extend, the one to "any joint obligor, contractor, or partner," and the other to "any person" non-resident.

The appeal will be therefore allowed. Defendant will have leave to enter a conditional appearance. Inasmuch as plaintiff's want of candour upon his original application would abundantly justify a dismissal of this appeal (*Plaskitt v. Eddis*, 79 L. T. 136), and because he succeeds, not at all as of right, but solely by the indulgence of the Court, the costs of this appeal and of the motions in Chambers will be to defendant in the cause. Substantial justice will, I think, be thus best accomplished.

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MARCH 2ND, 1906.

DIVISIONAL COURT.

McALISTER v. BRIGHAM.

*Timber—Agreement for Sale of Standing Timber—Construction—Quantity of Timber—Measurements—Estimates—Conflicting Evidence.*

Appeal by plaintiff from judgment of BRITTON, J., 6 O. W. R. 812.

G. C. Gibbons, K.C., for plaintiff.

A. G. MacKay, K.C., for defendant.

The Court (MULOCK, C.J., ANGLIN, J., CLUTE, J.), dismissed the appeal with costs.