

SHIP—BILL OF LADING—INCORPORATION OF CONDITIONS OF CHARTER PARTY INTO BILL OF LADING.

In *Serraino v. Campbell* (1891), 1 Q.B. 283, the Court of Appeal (Lord Esher, M.R., Lopes and Kay, L.JJ.) affirmed the decision of Huddleston, B. (25 Q.B.D. 501), which we noted *ante* vol. xxvi., p. 583, the question, it may be remembered, being whether, where a bill of lading contained the words, "they (the consignees) paying freight for the said goods, *and all other conditions as per charter*," these latter words in italics had the effect of incorporating a clause in the charter party exempting the ship-owners from liability for loss occasioned by the stranding of the ship through the negligence of the master or crew, which was contained in the charter-party. The Court of Appeal were agreed that the words incorporated only those stipulations in the charter-party which were to be performed by the receiver of the goods, and did not include conditions which would exempt the charterer from liability for negligence. As Kay, L.J., puts it, the expression was equivalent to "they paying freight, and performing or observing all other conditions."

PRACTICE—SERVICE OF WRIT—ACTION AGAINST FOREIGN FIRM—SERVICE ON PERSON TEMPORARILY WITHIN THE JURISDICTION "AS PARTNER"—ORD. IX., R. 6 (ONT. RULE 265).

Western National Bank of New York v. Perez (1891), 1 Q.B. 304, shows that the procedure prescribed by the Rules for the service of writs on defendants sued by the name of a firm is not in as clear or satisfactory a condition as it ought to be. We have had two or three judicial attempts to elucidate the Rules on this point lately, but the difficulty and confusion seem to become "worse confounded." In the present case the writ was issued against a firm which carried on business abroad, and all the members of the defendant firm were domiciled and resident abroad. The writ was served on a person not named in the writ, who was temporarily in England, whom the plaintiffs alleged to be a partner, and who was expressly served "as partner." He entered a conditional appearance, which was struck out as irregular. He then entered an unconditional appearance, and moved to set aside the service on the ground that he was not a partner of the defendant firm. A Divisional Court (Pollock, B., and Day, J.) refused to set aside the service. On the case coming before the Court of Appeal (Lord Esher, M.R., and Lindley and Bowen, L.JJ.) that Court had some difficulty in deciding what ought to be done. Lord Esher thought that the service on the appellant was good service on the firm; but Lindley and Bowen, L.JJ., were of opinion that, on the authority of *Russell v. Cambefort*, 23 Q.B.D. 526 (see *ante* vol. 26, p. 8), the defendant firm, being a foreign firm, the service was not good; but that if the appellant had been individually named in the writ, the service on him would have been good, and that the omission to name him in the writ was an irregularity which the defendant had waived by entering an appearance. The order they made, therefore, was that if the plaintiffs amended the writ by naming the appellant and the other members of the firm individually as defendants, the service was to stand as good service on the appellant (not on the firm); but if they neglected to amend as stated, then the service was set aside with costs. Lindley and Bowen, L.JJ., were of the opinion that the effect of *Russell v. Camde-*