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WHAT IS AN EX PARTE ORDER?

In *Broom v. Pepull*, 23 O.L.R. 630, on the application of the plaintiff, in the absence of the defendant, and without notice to him, an order was made by the Master in Chambers purporting to be made on the defendant's consent, but which did not in fact follow the consent. On the defendant becoming aware of the mistake in the order, he immediately applied to the Master in Chambers to rectify the order and the Master granted the application, but a Divisional Court has solemnly determined that this procedure was erroneous, that the Master had no power to correct the mistake, and the defendant's only remedy was by appeal, because it was said the order was made *ex parte* within the meaning of Rule 358. With great respect to the learned judges who arrived at that conclusion, we venture to think that it is not well founded. In Sweet's Dictionary the following explanation is given of the meaning of the term "*Ex parte*." "S. 1. In its primary sense '*ex parte*' as applied to an application in a judicial proceeding means that it is made by a person who is not a party to the proceeding, but has an interest in the matter which entitles him to make the application. Thus, in a bankruptcy proceeding, or an administration action, an application by A.B., a creditor or the like, would be described as made '*ex parte* A.B.,' that is, on the part of A.B. S. 2. In its more usual sense *ex parte* means that an application is made by one party to a proceeding in the absence of the other. Thus an *ex parte* injunction is one granted without the opposite party having had notice of the application. It would not be called *ex parte*, if he had proper notice of it, and chose not to appear to oppose it." This definition we think quite correctly lays down what is meant by the term, and it is the secondary meaning above given which