

SUTHERLAND, J.

FEBRUARY 20TH, 1918.

SHIELDS v. SHIELDS.

Contempt of Court—Disobedience of Injunction Order—Motion to Commit—Delay in Issuing Order—Personal Service of Order not Made on Defendant Said to be in Contempt—Practice—Knowledge of Order.

Motion by the plaintiff to commit the defendant John J. Shields for contempt of Court in disobeying an injunction order.

The motion was heard in the Weekly Court, Toronto.

W. E. Fitzgerald, for the plaintiff.

W. Lawr, for the defendant John J. Shields.

SUTHERLAND, J., in a written judgment, said that the first injunction order was made by the Local Judge at London on the 12th September, 1916. The injunction was continued by an order of Latchford, J., of the 27th September, 1916. The defendant John J. Shields was thereby restrained from cutting timber on certain lands and from disposing of or dealing with any timber thereon. This order was varied by an order of Middleton, J., by which the defendant was further restrained from cutting timber for any purpose on the land, without the approval of the Local Master at London.

It appears that the solicitors for the defendant were aware of the terms of the various orders, and that knowledge thereof had been communicated to the defendant.

The learned Judge was not satisfied from the material that the defendant had not in fact violated the order of Middleton, J., which was the existing one.

But it was objected that, as the order of Middleton, J., had not been personally served upon the defendant John J. Shields, an order for his committal could not be made.

There was great delay on the part of the plaintiff in issuing the order of Middleton, J.; it was not issued until after the notice of this motion had been served; and there was no satisfactory explanation of the delay. In a matter so important as the committal of a litigant for alleged violation of the terms of an order, the practice of making personal service of the order before launching the motion should not be departed from, except in special circumstances.

Upon the whole, the learned Judge was unable to see his way, upon the material before him, to make the order for committal, and he declined to do so.

Motion dismissed without costs and without prejudice to any further motion which the plaintiff may see fit to make.