

ill and confined to the hospital; his medical attendant refusing to permit any person to have access to him. That continued to be the state of affairs until the 18th February, when, on an application by the plaintiff to the Master in Chambers for an order for substitutional service, an order was made extending the time for service until the 6th March. On the 28th February, the defendant moved before the Master in Chambers for an order rescinding the order of the 18th February, relying in part upon his sworn statement that he knew of no attempt to serve him personally with the notice of motion or other proceeding; that he made no effort or attempt to avoid service, and did not give instructions to any other person to prevent service being effected; and that he first learned of the order of the 18th February, on the 23rd February, from Mr. Beament, who appears from the proceedings to be the defendant's solicitor.

The application came on for hearing on the 6th March, as well as another application by the plaintiff for an order for well as another application by the plaintiff for an order for substitutional service. The application for the rescinding order was refused; and, on the plaintiff's motion for an order for substitutional service, the time for service was further extended for ten days from that date. Personal service of the original notice of motion on the defendant was effected on the 7th March.

The present application is by way of appeal from these two orders, and for an order that these proceedings be dismissed, on the ground that the defendant was not served within the time prescribed by sec. 165 of the Municipal Act, 1913. That section provides that "the notice of motion shall be served within two weeks from the date of the fiat, unless upon a motion to allow substituted service the Judge or Master in Chambers otherwise orders," and that it "shall be served personally, unless the person to be served avoids personal service, in which case an order may be made for substituted service."

The position taken by the defendant is, in effect, that it is not shewn that he avoided personal service, and that, therefore, there is no power to grant an extension of time for the service. If that be the proper interpretation of the section, an extension of time for service could only be granted on practically the same state of facts as would justify the making of an order for substituted service.

That is not my view of the construction of that section. In my opinion, on an application for leave to serve substitutionally,