

deceased. She is entitled to compel defendant, after the expiration of one year from the death of David Fendal, to proceed to administer the estate and make the proper distribution thereof. If any proceedings are taken against defendant in regard to the estate of David Fendal, the defendant should give notice to plaintiff. Plaintiff is entitled to costs of the action out of the estate as against the defendant as administrator.

CARTWRIGHT, MASTER.

OCTOBER 31ST, 1903.

CHAMBERS.

TAYLOR v. TAYLOR.

*Writ of Summons—Substituted Service—Motion by Person Served to Set Aside—Status of Applicant—Costs.*

An order was made for substituted service of the writ of summons on a solicitor, who, on being served, moved to set aside the service.

W. J. Elliott, for the applicant.

H. D. Gamble, for plaintiff, objected that the applicant had no locus standi.

THE MASTER.—Mr. Elliott relied on *The Pomeranian*, 4 P. D. 195, and *Young v. Dominion Construction Co.*, 19 P. R. 139. A consideration of the matter leads me to the conclusion that the objection must be sustained. The case in 4 P. D. seems to have been decided on the merits, and no objection was made that the applicants had no status. The report of the case in 19 P. R. is misleading. The original papers have been sent to me, and from these it appears that the motion was made on behalf of the defendants and not of the solicitors. It may be that the application in the *Pomeranian* was made in the same way.

[Reference to *Heaslip v. Heaslip*, unreported; *Martin v. Martin*, 3 B. & Ad. 937; *McDonald v. Crombie*, 2 O. R. 243, at p. 246.]

While it may still be open to defendant hereafter to move against the order in question and any proceedings founded thereon, I do not think that the applicant is entitled to do so, when he expressly negatives any professional relationship with the defendant.