

HON. MR. JUSTICE MIDDLETON.

MARCH 11TH, 1914.

## SNIDER v. SNIDER.

6 O. W. N. 80.

*Pleading—Reply—Action on Promissory Note — Embarrassment—  
Order Permitting Pleading to Remain—Leave to Appeal from.*

MIDDLETON, J., gave leave to appeal from the order herein of Mr. Justice Britton, 26 O. W. R. 13, reversing an order of the Master-in-Chambers striking out plaintiff's replication.

Motion for leave to appeal from an order of HON. MR. JUSTICE BRITTON, pronounced 23rd February, 1914, reversing an order of the Master in Chambers striking out the replication of the plaintiff.

W. J. Elliott, for foreign executor.

F. C. Snider, for Ontario executor.

H. E. Irwin, K.C., for plaintiff.

HON. MR. JUSTICE MIDDLETON:—The facts giving rise to this litigation are simple. The plaintiff alleges that his brother, the late T. A. Snider, having made his will by which he left the plaintiff a legacy of \$10,000, from which was to be deducted the amount of any advance that might be made during the testator's lifetime, made him advances to the extent of the face amount of the legacy, but thereafter his brother desiring to release him from these advances, so that he might receive his legacy in full, adopted the device of giving him promissory notes to the amount of \$10,000, which he was to be at liberty to use as a set-off against the advance, and so leave him free to receive the legacy.

Instead of setting out these facts in simple language, and relying upon them as constituting his cause of action, the plaintiff sued upon the promissory notes. When he came to put in his statement of claim he followed up his claim upon the promissory notes with a long and rambling account of the transaction between his brother and himself.

My Lord the Chancellor, regarding the action as still an action on the notes, struck out this discursive matter, which was apparently intended to be pleaded by way of confession and avoidance of some expected defence. The defendants then plead, simply stating that the notes in question were without consideration, and do not constitute a valid claim