

SASK.
S. C.

decided before he was a party. But his application should have been made to the Judge who appointed the receiver and no other leave was necessary, except leave to move in vacation to set aside the order appointing a receiver. This leave was obtained from my brother McKay, as will be seen from his fiat which is as follows:—

Leave granted to serve and hear notice of motion during vacation, applying to add the registered owner a party defendant and move against order of July 22, 1915, appointing receiver.

If this fiat means anything it means that leave is granted to move in vacation to set aside the order appointing a receiver. It cannot possibly mean that my brother McKay was asked to grant leave to move my brother Lamont to grant leave to move my brother McKay to set aside the order. Yet that is how the defendant interpreted it, as his notice of motion was, "for an order allowing the said Richard H. Piper to move against the order of July 22, 1915."

This part of the application was properly refused as no leave was necessary, except leave to move in vacation which had already been granted by the Judge who had made the order, and to whom the application to set aside should properly have been made. As no leave was necessary, I think it must be taken that the order appealed from is an order refusing an unnecessary and improper application, although it must be confessed that my brother Lamont, in his memorandum of decision, decided the matter on other grounds. In my opinion, that does not make any difference as, in the result, the order appealed from as taken out is in the form which would have been followed if the application had been refused, because no such leave as was asked for was necessary.

The whole trouble has arisen from the defendant's misconception of the fiat of my brother McKay, and his ignoring of the rule that applications to set aside orders should be made to the Judge who makes them, and of the fact that no leave to make such an application was necessary.

It was urged on behalf of the appellant, that, in view of the decision of my brother Lamont, his right to apply to my brother McKay was taken away. I cannot agree with that. The order