

MIDDLETON, J., IN CHAMBERS.

JANUARY 8TH, 1916.

SASKATCHEWAN LAND AND HOMESTEAD CO. v.
MOORE.*Execution—Judgment—Variation—Amendment—Practice—Irregularity—Rules 219, 497, 502.*

Appeal by the defendant from an order of the Master in Chambers, ante 5, dismissing the application of the defendant to set aside a writ of execution issued on the 21st January, 1915.

A. J. Russell Snow, K.C., for the defendant.

J. J. Maclellan, for the plaintiffs.

MIDDLETON, J., said that the motion was "on the ground that no final judgment has yet been obtained in this action, and that under the judgment further directions and costs have been reserved." Upon the argument of the motion before the Master, and upon the appeal, the defendant sought to urge other technical grounds of supposed irregularity in the plaintiffs' proceedings; but counsel for the defendant emphasised very clearly the importance of adhering strictly to the provisions of the Rules, and could not, therefore, complain if the strict provisions of the Rules were invoked against him. Rule 219 provides that "a notice of motion to set aside a proceeding for irregularity shall specify the irregularity complained of and the objections intended to be insisted on." The defendant should, therefore, be confined to the grounds alleged in his notice of motion.

The judgment in the action was not well drawn, and was not in accordance with the judgment as pronounced; but the Appellate Division had held that the judgment as issued bound the parties.

By clause 5 it was provided that the defendant should pay to the plaintiffs the amount which should be found due to them by the Master in Ordinary forthwith after the confirmation of the Master's report. This was a judgment directing payment of the amount to be ascertained, so soon as the Master's report ascertaining it had become confirmed. It was true that, by a later clause of the judgment, further directions and the question of costs were reserved until after the Master should have made his report; but this did not make it necessary to have an adjudication upon the questions reserved, whatever they might be, be-