

MIDDLETON, J., IN CHAMBERS.

JUNE 26TH, 1914.

## FIELDING v. LAIDLAW.

*Judgment—Motion to Continue an Interim Injunction Turned into a Motion for Judgment—Motion to Vacate Judgment so Obtained and Execution Issued thereon—Rule 220—Costs.*

Motion by the defendants the Molsons Bank to vacate a judgment and set aside an execution.

K. F. Mackenzie, for the applicants.

R. Wherry, for the plaintiff.

MIDDLETON, J.:—The defendant Laidlaw, as a solicitor, was intrusted with certain clients' money. It was placed by him in the Molsons Bank to his own credit. For some reason—I am told arising out of a misunderstanding—the plaintiff desired to reclaim his money. He brought an action and sought an injunction to restrain the defendant Laidlaw from drawing the money from the bank and the bank from paying it out. An ex parte injunction was obtained. When this was served, the defendant Laidlaw took the position that, if Mr. Fielding wanted his money, he was welcome to it; and he drew his cheque for the \$1,400 in question, upon the defendant bank, in the plaintiff's favour.

The bank had been served with the injunction; and, although the cheque presented indicated that the parties had settled their differences, the bank declined to pay, owing to the existence of the Court order. The bank's solicitor supported the bank in this attitude. The result was, that, on the return of the motion, the situation being explained, I suggested that the motion to continue the injunction be turned into a motion for judgment, and that the bank be directed to pay the money to the plaintiff as his own. The bank was not represented, and I understood that it desired simply the protection of the Court order or judgment. The judgment was drawn and issued, and was taken to the bank.

The bank manager declined to act upon the order until it had been initialled by the bank's solicitor to indicate his approval. The manager did not offer to submit it himself to the solicitor, but apparently sought to place the onus of consulting