

MIDDLETON, J., IN CHAMBERS.

NOVEMBER 8TH, 1918.

BOSTON LAW BOOK CO. v. CANADA LAW BOOK CO.  
LIMITED.

*Practice—Ex Parte Order Improperly Made Set aside—Rules  
213, 216—Costs.*

Appeal by the defendants from an ex parte order of the Master in Chambers made on the 25th October, 1918.

R. T. Harding, for the defendants.

A. Bicknell, for the plaintiffs.

MIDDLETON, J., in a written judgment, said that the action had been pending for some time, and had been entered for trial at the Toronto sittings. A commission had been issued many months ago; the order provided for the return of the depositions in 3 months. The depositions had not been taken, and a motion was made to extend the time, but judgment on that motion had not been given.

The case now being about to be reached on the trial list, the plaintiffs' solicitor obtained, ex parte, an order directing: (1) the issue of letters rogatory; (2) that the depositions taken should be filed and might be given in evidence saving just exceptions; (3) that the trial of the action should be stayed until the depositions were filed.

The defendants appealed against the order as improperly made ex parte.

Counsel for the defendants was willing to allow the letters rogatory to stand without prejudice to his contention that the commission to which they were ancillary had been abandoned by the failure of the plaintiffs to attempt to have it executed within the time limited or at all until the present.

The making of an ex parte order is expressly prohibited: Rule 213. The only exception is that found in Rule 216, permitting an interim ex parte order when the delay necessary to give notice might entail serious mischief.

Reference to *Joss v. Fairgrieve* (1914), 32 O.L.R. 117.

Any order or decision which in any way affects the right of another, in accordance with the principles of natural justice, ought to be made after due notice.

The order should be set aside and vacated with costs to be paid by the plaintiffs to the defendants in any event of the action; but, the defendants consenting, the letters rogatory, which have been sent overseas, may stand on the terms indicated.