

The Master was right in rescinding the ex parte order, although on technical grounds it was not proper to treat the application as having been made on behalf of Laduke. For the purpose of this appeal, it should be treated as having been made by Mr. Martin as a solicitor and as such an officer of the Court.

Exercising the inherent power of the Court to rectify what was in substance an abuse of the process of the Court, the learned Judge directed that the order for substituted service and the service upon Mr. Martin and Mr. Gilmour and by registered letter be set aside, and that the Master's order of the 8th January be confirmed, with this variation, that it be so worded as to shew that the application came before the Court by way of advice received from one of its own officers, and not on behalf of Laduke.

The learned Judge questioned whether *Japhet v. Luerman* could be regarded as authority for the theory that a solicitor served with a writ for another person had no locus standi to move to set aside the service, in view of the decision in *The Pommerania* (1879), 4 P.D. 195; and suggested that the practice should be settled by a Rule of the Supreme Court.

The Master should not have awarded any costs to the defendant Laduke, and that part of his order should be struck out. There should be no costs to either party either before the Master or upon this appeal.

---

ORDE, J., IN CHAMBERS.

JANUARY 27TH, 1921.

DICKENSON v. GEGG.

*Pleading—Statement of Claim—Motion to Dismiss Action as Frivolous and Vexatious and because no Cause of Action Disclosed—Mortgage of Interest in Land—Sale of Interest under Receiving Order—Claim to Set aside Sale—Registration of Mortgage—Execution against Mortgagor—Priority—Costs.*

Motion by the defendant Gegg to dismiss the action upon the ground that it was frivolous and vexatious and that the statement of claim, read with the plaintiff's examination for discovery, disclosed no cause of action against the defendant Gegg.

J. M. Ferguson, for the applicant.

A. T. Hunter, for the defendant Hobberlin.

N. S. Macdonnell, for the plaintiff.