

THE  
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HON. MR. JUSTICE MIDDLETON.

JUNE 26TH, 1914.

JOSS v. FAIRGRIEVE.

6 O. W. N. 640.

*Appeal—Appellate Division—Ex-parte Order of Master Permitting Issue of Execution Set Aside—Order Pronounced in Court Issued as Chamber Order—Leave to Appeal from—Execution on Judgment Twenty Years Old.*

An order was obtained *ex parte* permitting issue of execution on a judgment which had remained unissued nearly twenty years. An appeal from this order, which should have been taken by way of a chamber motion, was made and heard in Court. The said order and the execution based on it were set aside on the ground that the motion was improperly made *ex parte*. By this time the judgment had become more than twenty years old. The Court order was issued as though it was a chamber order.

MIDDLETON, J., granted leave to appeal to the Supreme Court of Ontario on the grounds that the questions involved were difficult, that a technical error of the plaintiff's solicitor should not defeat the payment of a claim which undoubtedly existed, and that the order appealed from, in effect, finally disposed of a right or claim.

Motion for leave to appeal to a Divisional Court of the Appellate Division from the order of Falconbridge, C.J.K.B., 6 O. W. N. 401.

M. Wilkins, for the plaintiff.

O. H. King, for the defendant.

HON. MR. JUSTICE MIDDLETON:—I think the case is one in which leave should be granted, and that inasmuch as notice has already been given upon the assumption that the order was a Court order, it should stand as an appeal from the order actually issued.

A judgment for the recovery of money was given by consent, now more than twenty years ago. The judgment was not actually issued until recently, probably because the de-