

at St. Catharines on 5th December, 1905, appointing plaintiff receiver by way of equitable execution of plaintiff's judgment against the applicant.

F. Ford, for applicant.

W. N. Tilley, for plaintiff.

MABEE, J.:—Rule 48, read with clause (B.) of Rule 47, provides that any appeal by any person affected by an order made by a local judge for the appointment of a receiver by way of equitable execution after judgment, shall be made to a Judge of the High Court in Court, so the objection to the regularity of defendant's notice of motion, it being contended that it should have been to a Judge in Chambers, is disposed of.

The order in question was obtained from the local Judge *ex parte*, and defendant now moves for leave to appeal against it.

Rule 353 provides that the Court may extend the time for appealing, and the first question therefore is, whether such extension should be made.

It appears that an application for a receiving order was first made on 30th November, 1905, to Meredith, C.J., and the following note appears in his book of that date: ". . . I decline to make an *ex parte* order, leaving the applicant to move on notice."

The affidavit of plaintiff's solicitor states that in making the application to the local Judge he explained to him that the application had been made in Toronto before the Chief Justice, . . . but the affidavit is silent upon the point of the Chief Justice having refused to grant an *ex parte* order and leaving the applicant to move on notice, and had this been communicated to the local Judge, of course no *ex parte* order would have been made, and all the subsequent trouble would probably have been avoided. The refusal of the Chief Justice to make the order *ex parte*, and his (in effect) directing notice to be given, may not have been fully communicated to the solicitor in St. Catharines, and he may have supposed himself quite right in renewing his application as he did, but the result is the same, viz., that an order has been obtained from the local Judge which the Chief Justice had refused to make, and which he had left to be applied for only upon the usual notice being given.