

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 defendant was supposed to be worthless financially. There is no suggestion that the judgment has been paid. The judgment was settled upon notice to the defendant before the Senior Registrar, just before the expiry of the twenty years. An order was then made by the Master in Chambers, on the *ex parte* application of the plaintiff, permitting the issue of execution. The execution was issued and placed in the Sheriff's hands. The defendant appealed from the order of the Master in Chambers, upon the ground, *inter alia*, that the order was improperly issued *ex parte*. Although the motion by way of appeal was properly a Chambers motion, it was made in Court and heard in Court. The motion was out of time, but the learned Chief Justice of the King's Bench relieved the defendant from her default, and set aside the order and the execution based upon it, upon the technical ground that the order was improperly made *ex parte*.

The twenty years had then expired. The plaintiff desired to appeal, and, assuming that the order was a Court order, appealed. The order has now been issued as though it were a Chambers order, and this motion is made upon the theory that the order was rightly so issued.

I give leave to appeal, and extend the time so far as may be necessary to validate the notice already given, because the questions involved are difficult, and it appears to me questionable whether indulgence should have been granted to the defendant to avail himself of what was after all a technical error of the plaintiff's solicitor, and so defeat payment of a claim which undoubtedly exists; and also because in effect, though not in form, the order in question finally disposes of a right or claim.

A factor influencing my decision is the fact that it seems unfair to allow the motion to be made and heard in Court, the right of appeal from an order made in Court being untrammelled, and then, after an appeal is taken, to defeat it by issuing the order as a Chambers order.

The costs will be costs in the cause upon the appeal.