

Practice.

MEREDITH, J.]

[Jan. 21.

IN RE CHOSEN FRIENDS, RODDY AND LEAH.

Jurisdiction of Master-in-Chambers—Rule 1149—Insurance moneys—"His wife"—Plaintiff claiming.

This was originally an application by the Grand Council of the Canadian Order of Chosen Friends for an order directing the trial of an issue between Margaret Roddy and Joseph Leah, two claimants for the proceeds of an insurance certificate of \$1000 on the life of Samuel Leah, deceased. The certificate was on its face made payable to "his wife." The uncontradicted affidavit evidence showed that deceased was, when insuring, and up to time of his death, engaged to marry Miss Roddy; that when insuring he had stated that he was to marry her in a short time and was insuring for her benefit, that he gave her the policy, which she held continuously until his death; that he had often declared it was a provision for her should anything happen to him before or after their marriage. Joseph Leah claimed as administrator of the estate of the deceased.

The Master-in-Chambers *held* that the issue was purely one of law, and that Miss Roddy had no legal claim to the insurance moneys, and made an order bearing her claim.

On appeal, MEREDITH, J., *held*, that it was not contemplated by Rule 1149 that a case involving such an amount and such nice questions of fact and law should be summarily disposed of by the Master-in-Chambers, and ordered that unless the adverse claimants could agree to state facts for a special case to be submitted to a Divisional Court, an issue should be tried which he would settle if the parties could not agree as to its form.

D. Armour for Order of Chosen Friends.

F. A. Anglin for claimant Roddy (appellant).

C. W. Kerr for claimant Leah (respondent).

WINCHESTER, Official Referee,
for Master-in-Chambers.

[Jan. 26.

COOK v. COOK.

Alimony action—Examination on affidavit—Questions in issue—Examination on merits of case.

An application for interim alimony. Defendant, after putting in affidavit in answer, asked

enlargement to examine plaintiff on her affidavit filed in support of motion. The plaintiff, in her affidavit, swore to the marriage, and that she had left defendant's house, and that her husband was possessed of means while she was utterly destitute, and in a general clause she verified the facts in the statement of claim. The affidavits filed on behalf of defendant did not contradict plaintiff, except as to amount of defendant's means and the allegations of cruelty in statement of claim. The statement of defence, while not denying, did not admit the marriage or departure of plaintiff. Plaintiff's counsel opposed enlargement on the grounds that of the only material matters on an application for interim alimony, two, viz., marriage and departure of wife, were not in issue on the affidavits filed; and another, the husband's means, was within his own knowledge, and he denied the defendant's right to examine on the merits of the case.

Held, that the defendant might examine the plaintiff, but such examination must be confined to questions as to her own means of support. Subsequently, on examination of plaintiff, questions as to husband's means were also put without objection.

F. A. Anglin for plaintiff.

Reesor for defendant.

SECOND DIVISION COURT, COUNTY
OF ONTARIO.

DARTNELL, JJ.]

[Nov. 3.

MCNICHOLL v. ELLIS.

Chattel mortgage—Statement of renewal—Omission of one of the statements.

The statement of renewal was in the statutory form, except that the words "that the said mortgagee is still the mortgagee of the said property, and has not assigned the said mortgage," were omitted.

Held, that this omission was fatal.

T. Heaslop for the execution creditor.

J. B. Dow for the claimant.