

of separate and distinct causes of action, viz., a claim to set aside a will, and a claim to establish an earlier will.

Casey Wood, for plaintiff.

C. A. Moss, for defendant George McDonald.

W. E. Middleton, for other defendants.

MEREDITH, C.J., varied the order by restoring paragraph 4, but not interfering with the striking out of the paragraph of the prayer for relief which specifically asked that the earlier will might be established, without prejudice, however, to the plaintiff contending that he was entitled to that relief under the general prayer, and made the costs here and below costs in the cause.

MACMAHON, J.

JUNE 5TH, 1903.

TRIAL.

RODERICK v. SUPREME TENT OF KNIGHTS OF THE MACCABEES OF THE WORLD.

Life Insurance—Death of Insured—Presumption—Absence for Seven Years—Rebuttal of Presumption—Circumstances—Evidence.

Action by Annie Roderick upon a benefit certificate for \$2,000 issued by defendants. The question for trial was, whether Francis Edgar Roderick, the insured, and husband of plaintiff, was alive or dead. He was one of the charter members of Amity Tent, No. 120, of Hamilton. He was married to plaintiff in 1886, and the certificate was issued to him on 9th September, 1893. Plaintiff was named as beneficiary therein. Roderick came to Hamilton from Sackett's Harbour, in the State of New York. He left Hamilton early in February, 1894, remained a few days, and again left, and was last heard from by his wife in a letter which he wrote to her from Buffalo on the 14th May, 1894. He paid the monthly dues called for by the certificate up to the time of his death. The plaintiff paid all dues since up to the time the action was brought. Roderick was secretary of a camp of the Independent Order of Foresters at Hamilton, and upon his leaving Hamilton it was found that he had collected from the members about \$100, for which he had not accounted. An information was laid and a warrant issued in February, 1894, for his arrest.

G. Lynch-Staunton, K.C., for plaintiff.

W. M. McClemont, Hamilton, and H. H. Bicknell, Hamilton, for defendants.