

THE MASTER.— . . . The only material before me in support of the motion is plaintiff's affidavit. This states that the allegations in the statement of claim are true, and denies the allegations in the statement of defence. There is no evidence of any kind as to the ability of defendant to pay, if an order is made. On the other hand, the affidavit of defendant states positively that he is unable to pay any sum to plaintiff for alimony" . . . (giving a particular account of his circumstances). This affidavit is not impeached either by cross-examination or affidavits in reply. It must, therefore, be assumed to be true. It would be useless to make an order against a man who has no property on which it could operate.

The motion is refused.

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BRITTON, J.

DECEMBER 10TH, 1903.

TRIAL.

McGLEDDERY v. McLELLAN.

*Limitation of Actions—Real Property Limitation Act—Possession of Widow of Owner—Oral Agreement for Occupation of Land in Lieu of Dower—Conduct of Parties.*

Action for a declaration that the south-west quarter of the west half of lot 26 in the 3rd concession of the township of Eramosa, containing 25 acres, is the property of plaintiff and to vacate the registry of a conveyance thereof from Ellen McLellan to defendant as a cloud on plaintiff's title. Counter-claim for improvements.

D. Guthrie, K.C., and W. R. Riddell, K.C., for plaintiff.

J. J. Drew, Guelph, for defendant.

BRITTON, J.—Plaintiff establishes a clear paper title. One Alexander McGleddery was the owner. He died on 17th June, 1851, intestate, and under the law then in force the oldest son, Samuel McGleddery, became entitled to it as heir-at-law. Samuel, by his will dated 31st December, 1898, devised this land to plaintiff. Samuel died 8th March, 1899.

Alexander McGleddery left his widow Ellen him surviving. She married John McLellan, and defendant is a son by this