

RIDDELL, J., IN CHAMBERS.

MAY 21st, 1912.

*MacMAHON v. RAILWAY PASSENGERS ASSURANCE
CO.

Discovery—Examination of Plaintiff—Action on Life Insurance Policy—Issue as to Age of Assured—Production of Marriage Certificate—Relevancy—Indirect Method of Cross-examining upon Affidavit on Production—Contradictory Affidavit.

Appeal by the plaintiff from the order of the Master in Chambers, ante 1239, requiring the plaintiff to answer certain questions which he refused to answer upon his examination for discovery.

H. E. Rose, K.C., for the plaintiff.

Shirley Denison, K.C., for the defendants.

RIDDELL, J.:—The action is upon a life insurance policy. One of the defences is misrepresentation as to age. Upon the examination for discovery, the plaintiff refused to say whether the marriage certificate of the deceased (which would or might, as it is admitted, assist in proving the age of the deceased) was in the possession of his solicitors.

The ground of the objection is, that the plaintiff had already made an affidavit on production in which he did not mention this document; and it is contended on his behalf that the question which he objected to answer was an indirect method of cross-examining upon that affidavit.

I may say at once that I cannot understand the refusal of the plaintiff or his solicitors to make full disclosure of this document if it exists—if the claim is an honest one. But that does not disentitle him to take full advantage of the law if it is as he claims. . . .

[History of the legislation and practice, referring to 12 Vict. ch. 64(C.); 7 Wm. IV. ch. 2; Chancery Orders of 1850, No. 50; Chancery General Orders of 1853, No. 22, sec. 1 (3 Gr. 28); Chancery General Orders of 1868, No. 138; Nicholl v. Elliott (1852), 3 Gr. 536, 545; Dobson v. Dobson (1877), 7 P.R. 256; Paxton v. Jones (1873), 6 P.R. 135.]

In the Con. Rules of 1888, it was specially provided, Con. Rule 512, that "the deponent in every affidavit on production

*To be reported in the Ontario Law Reports.