

MIDDLETON, J., IN CHAMBERS.

MAY 7TH, 1912.

RE RIDDELL.

Security for Costs—Claimant of Fund in Court—Residence out of the Jurisdiction—Real Actor.

An appeal by John Riddell from the refusal of the Master in Chambers to order the claimant Adelia Pray to give security for the costs of an issue with respect to certain moneys in Court.

C. A. Moss, for John Riddell.

T. N. Phelan, for Adelia Pray.

MIDDLETON, J.:—The fund in question is the proceeds of an insurance policy upon the life of the late James Riddell. By the original policy, the money was payable to his granddaughter, the claimant Adelia Pray. Subsequently, a new apportionment was made, by which the money was diverted to the claimant John Riddell. If Adelia Pray is the granddaughter of the assured, then the later apportionment is of no effect, because she would then be within the class of preferred beneficiaries, while the brother is outside of that class.

The real issue to be tried is the fact as to the relationship between Adelia Pray and James Riddell. It is said that she is not his grandchild, but was a child, by a former marriage, of the wife of John Riddell, son of James Riddell. She is resident out of the jurisdiction.

The case is governed entirely by *Boyle v. McCabe*, 24 O.L.R. 313. It is manifest that Adelia Pray is a real actor. She is a claimant upon the fund; and to succeed she must establish that she is a grandchild. It may be that the onus will shift when the document is produced in which the testator describes her as his grandchild; but this is not the test. If the insurance company had not paid the money into Court, and called upon her to prove her title, she would have had to sue. This shows that she is an actor, within the meaning of the rule established by the case referred to.

I recognise the hardship of the practice thus established, and would have preferred the view that, where the money is paid into Court, and those appearing to have claims upon it are brought before the Court for the purpose of establishing their claims or being for ever barred, security for costs should not be required; because the claim is not voluntarily put forth by