

was directed. Finally, it was said, the Official Referee affirmed an option to purchase. After leave obtained from the Referee, a motion was launched at the instance of E. G. O'Kelly and H. Sutherland to set aside the option. No affidavit was filed in support shewing the applicants to have any status either in the winding-up proceedings or the action. It was intimated in the notice of motion, however, that it was proposed to read in support thereof the examination of the plaintiff. An appointment was obtained and a subpoena issued for the purpose of the examination and served on the plaintiff. Thereupon she obtained leave and moved to set aside the appointment and subpoena. No grounds were set out in the notice of motion. On the return of the motion it was enlarged, the parties being severally directed to file such further material as advised. In an affidavit by O'Kelly it was stated that in reality the plaintiff represented a syndicate of which O'Kelly had been, and Sutherland was still, a member. The plaintiff urged that these men had no status to move to set aside the option. The learned Judge said that the Referee had full cognisance of the matter of the option and of all facts which would appear necessary to deal with the motion to set it aside. Before leave was given to move to set it aside, some material definitely disclosing the interests of the applicants should have been filed, or otherwise they should have been left to issue a writ in the ordinary way, and, if necessary, move for an injunction to restrain the proceedings under the option. It was said that the Referee knew that the applicants had such an interest as entitled them to move; but the plaintiff had filed no affidavit in answer to the allegations contained in O'Kelly's affidavit. In the circumstances, the appointment and subpoena should not be set aside. Motion dismissed without costs. W. H. Clipsham, for the plaintiff. H. E. Rose, K.C., for O'Kelly and Sutherland.