

MACMAHON v. RAILWAY PASSENGERS ASSURANCE CO. (No. 2)—
MASTER IN CHAMBERS—MAY 6.

Discovery—Examination of Plaintiff—Action on Life Insurance Policy—Issue as to Age of Assured—Production of Marriage Certificate—Relevancy—Affidavit on Production.—In this action on a life insurance policy, one of the defences was that the age of the assured was incorrectly given. On the examination of the plaintiff for discovery, he was interrogated on this point, and was asked to produce the marriage certificate of his mother, the assured. No such document was mentioned in the plaintiff's affidavit on production, and his counsel objected to these questions as being an attempt to cross-examine on the affidavit on production. The plaintiff did not say whether he had it or not; but stated that he was informed that the marriage took place at Belleville, Ontario, in what year he could not say. He stated facts as to his own birth and that of his elder brother, which would agree with 1864 as the date of the marriage. He further stated that he had no record of his mother's age, and that all his inquiries on the point had been fruitless. He was then asked again as to the marriage certificate, and the objection of his counsel was again made and sustained by the examiner. The defendants moved for an order requiring the plaintiff to answer the questions, and to produce the marriage certificate therein referred to, and to make a further affidavit on production. The Master said that it was to be observed that the plaintiff had never admitted that he had at any time any marriage certificate of his parents. It was, therefore, clear that the motion, so far as it asked for a further affidavit, was made too soon. (The Master referred to *Standard Trading Co. v. Seybold*, 1 O.W.R. 650.) Counsel for the defendants stated that he was willing to accept the statement of the plaintiff's solicitors as to whether there was a marriage certificate in existence, and if the plaintiff had seen it or had had it in his possession. The Master said that the defendants were entitled to this, on the ground that the true age of the assured was in issue, and the production of the certificate *might* enable the defendants to obtain conclusive evidence on this point. (See *Attorney-General v. Gaskell*, 20 Ch. D. 528, cited in *Bray*, p. 112.) This was the more important as the plaintiff admitted that, a month before her death, his mother said, "I am about sixty-four." One of the conditions of the policy was that the assured was on the 11th April, 1911, not sixty-two. If the solicitors were not able to give this information, there must be further examination before the