

The appeal should be allowed with costs, and judgment should be entered in favour of the plaintiff for \$75 damages, with costs as provided for by the Rules.

Appeal allowed.

HIGH COURT DIVISION

LENNOX, J., IN CHAMBERS.

JUNE 9TH, 1919.

ANDERSON v. CLARKSON.

BURK v. CLARKSON.

Appeal—Leave to Appeal from Orders of Judge in Chambers—Rule 507—Orders Striking out Paragraphs of Reply—Unnecessary Pleading—Unimportant Question.

Motion in each action by the plaintiff for leave to appeal from orders of SUTHERLAND, J., in Chambers, affirming orders of the Master in Chambers striking out paragraphs of the reply in each action.

T. R. Ferguson, for the plaintiff.

Hamilton Cassels, K.C., for the defendants.

LENNOX, J., in a written judgment, said that the plaintiff in both actions was the same person, "Evangeline Medora Anderson" or "Evangeline Medora Burk." In the first action she asked to have it declared that she was entitled to one half of the real and personal estate of Daniel Francis Burk, deceased, under a writing (set out in the statement of claim) alleged to be under the hand and seal of the deceased. In the second action she asked, as executrix of the last will of the deceased, to have the will established and letters probate thereof granted. The defendants delivered statements of defence in the two actions. The plaintiff replied, joining issue, and (in the first action) adding this paragraph: "The plaintiff will object at the trial that no evidence is admissible to support the allegations contained in the latter part of paragraph 3 of the defence . . . in that no facts are pleaded to support the conclusions of law therein alleged." In the second action the plaintiff also joined issue and added: "(2) The plaintiff does not by her claim herein allege that she is the widow of the said Daniel Francis Burk, deceased. (3) The plaintiff will object that no evidence is admissible to support the