UNREPORTED PRACTICE CASES*

EVIDENCE—HUSBAND AND WIFE (S.10) PRIVILEGE—EXAMINATION FOR DISCOVERY

Plaintiff sued for the proceeds of a life insurance policy on her deceased husband, the sole issue in the action being the question of whether or not the husband committed suicide. On the examination for discovery the Plaintiff was asked questions relating to the relationship between the parties particularly as to circumstances which might reveal a motive for suicide, the circumstances of his death, the results of inquiries into it, and details of conversations with him prior to his death.

Objection had been made to a number of questions, specifically as to communications between husband and wife on the grounds that these were privileged under section 10 of the Evidence Act. The Master held that this privilege could not be claimed by the widow; it was a statutory privilege, and construing the statute strictly it does not extend to include widows, widowers, or divorced persons. The Master applied *Shenton* v. *Tyler* [1939] Ch. 620, noting it had been followed in *Ostrom* v. *Henders* [1939] O.W.N. 594, and that the House of Lords in *R.* v. *Rumping* [1962] 3 All E.R. 256 had affirmed the basis of the rule to be purely statutory without, however, approving all the reasoning in *Shenton* v. *Tyler*. The Master refused to follow *Connolly* v. *Murrell* (1891) 14 P.R.U.C. 187.

The widow would be required to answer questions relevant to motive or facts relating to the issue of suicide as the examination may be searching and thorough: *Dominion Trust Co.* v. *New York Life* [1919] A.C. 254; *London Life* v. *Chase* [1933] S.C.R. 207; *Carnty* v. *Carney* (1913) 5 W.W.R. 849; *Hooper* v. *Dunsmour* (*No. 2*) (1903) 10 B.C.R. 23; *Ferguson* v. *Dial* (1959) 30 W.W.R. 469.

(*Layden* v. *North American Life*, S.C.A., J.D.E., No. 61638, April 21, 1970; The Master, L. D. Hyndman, Q.C.)

NOTICE TO ADMIT—REPLY—SETTING ASIDE

Paintiff served a notice to admit in a personal injury action requiring the Defendant to admit that the Plaintiff was employed by a named employer, at a specified rate and that he had been unable to work on specified dates because of his disability and, further, to admit previous earnings. The Defendant applied to set aside the notice under Rule 230(7).

The Master held that the Defendant was entitled to demand that the Plaintiff prove these things subject to the power of the trial judge under Rule 230(4) to require the Defendant to pay costs. The Master said that he had some difficulty in construing Rule 230(7) in view of the existence of Rule 230(2). The Master set aside the notice indi-

cating that the Defendant should, perhaps, have resorted to Rule 230(2)(a), and replied to the notice by denying the matters specifically, leaving Rule 230(7) to cover cases of abuse.

On appeal Greschuk J., allowing the appeal, held that the Master's reservation was sound and that the Defendant's proper course was to have replied under rule 230 (2) (a), and the trial judge could decide whether or not the refusal was reasonable.

The plaintiff subsequently offered to withdraw the notice to admit so that trial would not be delayed while an appeal was taken to the Appellate Division and the action was settled.

(*McRobbie* v. *Fotchuk*, S.C.A., J.D.E., No. 61894, The Master, L. D. Hyndman, Q.C.; on appeal: Greschuk, J. (February 9, 1970).)

• Edited by Professor W. A. Stevenson, Faculty of Law, University of Alberta.