

the provisions of the Railway Act which enable a railway company to protect itself against apprehended claims. See secs. 187, 210, 213, 214.

The provision as to interest will be struck out, otherwise the appeal will be dismissed with costs.

*Judgment accordingly.*

MAGEE, J.A., IN CHAMBERS.

SEPTEMBER 26TH, 1913.

RE KENNA.

*Security for Costs—Habeas Corpus Proceeding—Custody of Infant—Applicant out of the Jurisdiction—Motion for Security Made after Refusal of Application and Appeal Launched by Applicant—Security Limited to Future Costs—Discretion—Amount of Security.*

Philip Kenna, the father of Frederick Kenna, an infant, of five years of age, having launched an appeal from the order of MIDDLETON, J., 4 O.W.N. 1395, refusing an application by the appellant, upon habeas corpus, for delivery of the infant to his custody by Albert Breckon and his wife, the foster parents, the latter moved before a Judge of the Appellate Division in Chambers for an order requiring Philip Kenna to give security for past and future costs, he being out of the jurisdiction.

H. F. Parkinson, for the applicants.

T. L. Monahan, for Philip Kenna.

MAGEE, J.A.:—Albert Breckon and his wife, the present custodians of the infant, apply for an order that security for their costs already or hereafter incurred be given by Philip Kenna, the infant's father, who throughout the proceedings has been and still is resident out of Ontario. His application in habeas corpus proceedings for the custody of the infant was dismissed, but he has given notice of appeal from that dismissal.

I think the decision of Ferguson, J., in *Re Giroux* (1903), 2 O.W.R. 385, upholding a *præcipe* order for security issued in habeas corpus proceedings, must govern me as to the original right to obtain security; and see *Re Pinkney* (1902), 1 O.W.R. 715.