

They had a considerable quantity of their own, and advertised a sale of all. The defendant Strawbridge, the co-executor with Mrs. Winters under her husband's will, then commenced proceedings against Mr. and Mrs. Winters, to restrain a sale, and the costs in question were incurred. The action was dismissed with costs as against Mr. Winters, and it was held that the infant had no right to restrain the sale, and Mrs. Winters agreed, without admitting liability, to pay \$200 into Court, but eventually, instead, left the farm with \$200 worth of chattels, the conceded value of those she received, upon it.

The rule is that a next friend of an infant is entitled to indemnity from him if the proceedings taken are proper and undertaken with due care and prudence. I am not able to say that the Chancellor's view that Strawbridge was not entitled to indemnity is incorrect. Strawbridge incurred costs of \$400 to try and enforce a doubtful claim to goods worth \$200. This might not be conclusive if it were shewn that Strawbridge before doing so had taken obvious steps to avoid litigation. From what appears in evidence it seems highly probable that if he had gone to see Mrs. Winters, who lived in his neighbourhood, the action would have become unnecessary. To hold him entitled to charge these costs against the infant would be to offer a premium to rash and imprudent litigation. It is not shewn that the \$200 worth of goods could not have been preserved without incurring any costs at all. As to the claim against the infant, he is clearly protected by R. S. O. ch. 146, sec. 6, his ratification not being in writing. Appeals dismissed with costs.

P. Clark Macnee, Pieton, plaintiff in person.

C. H. Widdifield, Pieton, solicitor for defendant Rose.

MARCH 5TH, 1902.

DIVISIONAL COURT.

CROWN CORUNDUM AND MICA CO. v. LOGAN.

*Action — Order Dismissing — Undertaking — Default in Giving—  
Effect of.*

Decision of MEREDITH, C.J., in Chambers, ante 107, affirmed on appeal. (FALCONBRIDGE, C.J., STREET, J.)

W. E. Middleton, for plaintiffs.

G. F. Macdonnell, for defendant.