

Province of Ontario.

COURT OF APPEAL.

Practice.]

IN RE WEATHERALL.

[April 22.]

*Appeal—Leave—Order for payment of costs—Discretion of High Court—
Habeas corpus—Adjournment of application—Terms.*

Motion by M. Weatherall, the paternal grandmother of an infant of twelve years of age, for leave to appeal from an order of Divisional Court affirming an order of ROBERTSON, J., in Chambers, imposing upon the applicant the payment of a sum for costs, as a term of granting an adjournment and leave to proceed with her application for the custody of the infant.

On Feb. 4, 1901, on the application of M. Weatherall, a writ of habeas corpus ad subjiciendum was issued out of the High Court, and pursuant thereto one Ashton, principal of the Mohawk Institute, where the child was, produced her on Feb. 15, and filed certain affidavits, in Chambers. The applicant applied for an adjournment, and the judge adjourned the application until Feb. 25, on condition that the applicant should pay to Ashton \$22—\$10 counsel fee, and \$12 expenses of producing the child in court—on or before Feb. 19, and in default of payment, that the proceeding be dismissed with costs. The applicant did not pay the \$22, and appealed to a Divisional Court on the following grounds:—1. That Ashton, not having a solicitor, incurred no costs, and could not be allowed or obtain such against her. The material in support of this ground was not before the Judge in Chambers. 2. That the applicant was entitled as of right to an enlargement for the purpose of cross-examination upon, or otherwise answering the affidavits filed by Ashton, and served only on Feb. 14. 3. That the applicant had a right to an enlargement to cross-examine upon the truth of the return to the writ.

The Divisional Court heard the appeal on March 1, and directed that upon payment of \$10, in addition to the \$22, the application should be heard as though no default in payment had been made, and this application was thereafter made for leave to appeal.

Held, that leave to appeal should be refused.

Per ARMOUR, C.J.O.: The conclusion to be derived from *In re Dodds*, 2 DeG. & J. 510, and other cases, shews that the Judge in Chambers had jurisdiction to order the applicant to pay the expenses of the respondent in having the body of the infant before the Court. There is nothing to militate against this conclusion, because there is no provision as to expenses in R.S.O. c. 83, for that Act was passed, as is shewn by its preamble, merely for the purpose of extending the remedy by habeas corpus. The