

*corpus*, heard partly upon oral evidence and partly upon affidavit evidence.

T. L. Monahan, for father.

H. M. Mowat, K.C., for foster parents.

HON. MR. JUSTICE MIDDLETON:—Phillip Kenna, the applicant, is of English origin, and a Catholic. He was married some ten years ago, at Manchester, to Lucinda Dolores de Phillips, a Protestant. In April, 1904, Kenna came to Canada and settled temporarily at Montreal. His wife followed him in the spring of 1906, and they lived there until June, 1909. The infant was born on the 22nd of June, 1908; and on the 26th of July, 1908, it was baptized in the Catholic Church.

A year later, in June, 1909, Kenna came to Toronto, his wife following some time afterwards. From this time on the relations of the husband and wife have been most unsatisfactory. The husband charges his wife with infidelity and with living in open adultery with a man at Niagara Falls for sometime, and with another man in Toronto at other times. The wife charges her husband with various offences and with being a man with whom no woman could live. Into these charges and recriminations I do not think I need go in detail.

On July 16th, 1910, Kenna executed a document as follows: "I, Phillip Kenna, hereby authorize Mrs. M. Jones of 51 Peter street, Toronto, to give up Frederick Kenna to my wife Lucy Kenna unconditionally. Yours Resp. Phillip Kenna. Witness Joseph Jones."

The parties differ as to circumstances under which this document was given. The wife claims that it was an unconditional abandonment of the child to her. The husband contends that it was for the purpose of enabling her to receive the child from the place where Kenna then had it boarding, for the purpose of founding again a united household. On the face of it this seems improbable.

In May, 1911, Kenna sought the aid of the St. Vincent de Paul Society; and Mr. Patrick Hynes, its agent, at his instance laid an information before the police magistrate under the statute, charging that the wife was allowing the child "to grow up without salutary parental control, and