REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Moss, J. A.] FAHEY *v.* JEPHCOTT. [Feb. 21

Security for costs—Dispensing with Court of Appeal—Poverty of appellant—Infancy—Divisional Court.

Security for costs of an appeal to the Court of Appeal was dispensed with, under the power given by Rule 826, where the appellant was an infant suing by her next friend and unable by reason of poverty to give or procure security, the circumstances being that her action had been dismissed by the judge at the trial, following a reported decision of a Divisional Court, with which the appellant would be met if she appealed to a Divisional Court, which she was at liberty to do without giving security.

Waldron, for appellant. *Dewart*, K.C., for respondent.

Moss, J. A.] DOWNEY *v.* STIRTON. [Feb. 21

Leave to appeal—Judgment of Divisional Court—Special circumstances—Defamation—Misdirection—Evidence—Damages—Discretion.

Motion by the defendant for leave to appeal from an order of a Divisional Court (ante) affirming the judgment of FALCONBRIDGE, C. J., upon the verdict of a jury awarding the plaintiff $100 damage in an action for libel. The libel complained of was contained in a letter written by the defendant, and published in certain newspapers. As part of his defence the defendant alleged that, before the publication of his letter, the plaintiff wrote two articles, one published in two newspapers before the letter was published, and the other in one newspaper afterwards. For these articles the action of *Stirton* v. *Gummer*, the defendant being the proprietor of the newspapers, was instituted, and a verdict was found by a jury for $500. After the trial of that action, and before a new trial was directed by a Divisional Court (31 O.R. 227), the verdict in this action was obtained. At the trial of this action the plaintiff was examined, and stated that the defendant had got $500 damages in respect of one of the articles, and his evidence was not objected to, and the trial judge referred to it in his charge. On motion to the Divisional Court it was objected that leave to amend should have been given, and another article written some months after the defendant's letter should also have been admitted in evidence, and that the trial judge was in error in refusing to admit it, and referring to the case of *Stirton* v. *Gummer*. The Divisional Court unanimously held against the