

in favour of plaintiffs, "upon giving to the defendants proper indemnity to be settled by one of the registrars of this Court."

The senior registrar settled as such indemnity a bond in the penal sum of \$400, conditioned to be void upon the third parties "effectually prosecuting such appeal in the name of the Rathbun Company and paying such costs of the appeal (if any) as shall be awarded to be paid by the said Rathbun Company, and in all other respects indemnifying and saving harmless the said Rathbun Company from all loss, costs, damages, or expenses, which the said Rathbun Company may incur or be put to by reason of the bringing or prosecution of this appeal." The third parties accepted this settlement of the form of the bond, and gave a bond accordingly, with the United States Fidelity and Guarantee Co. as sureties. The defendants appealed, contending that this bond was insufficient in form and in amount.

E. D. Armour, K.C., for defendants.

J. W. Bain, for the third parties.

ANGLIN, J.—Both parties stand upon the terms of the order of the learned Chief Justice as issued; the third parties maintaining that indemnity against the costs of the proposed appeal only was intended to be ordered, and that the bond is sufficient in form and amount for that purpose; the defendants contending that indemnity against the entire claim of the plaintiffs is what the order imposes as the condition of an appeal being taken in their name, or, if not, indemnity against any possible increase in the present judgment of the plaintiffs upon such appeal. In any case they say that \$400 is not a sufficient sum to properly indemnify them against costs which the plaintiffs may recover upon such appeal over and above the sum of \$200 paid into Court by the third parties as security to the plaintiffs.

It is obvious that a little more foresight upon the settlement of the order of the learned Chief Justice would have resulted in its terms being more explicit, and the present difficulty would have been avoided. As it is, I confess that its meaning and the scope of the indemnity which it directs is open to much doubt. Were I at liberty to inquire from Meredith, C.J., what he really intended to order, the difficulty would probably entirely disappear. I am obliged, however, to construe the order as it is drawn up, and from its language to gather, as best I can, its true meaning and effect, if I am now to determine the form and the amount of the penal