

In *Small v. Henderson* (1899), 18 P.R. 314, Osler, J.A., considered the practice to be that security could be applied for and obtained at any time before judgment; and, the judgment having been in the plaintiff's favour, he refused to order security when the defendant was appealing; and see *Gledhill v. Telegram Printing Co.* (1909), 14 O.W.R. 1.

In *Hately v. Merchants Despatch Co.* (1886), 12 A.R. 640, the plaintiff, after obtaining judgment, was held not entitled to have his bond for security given up to him for cancellation, as the defendants were appealing, and hence the final judgment had not been given.

The effect is, I think, that the proceedings are still continuing, and judgment has not been given, and the respondents, who have been successful, are entitled yet to ask for security, as the old rules with regard to early application do not, under the present general Rules, apply. See *Martano v. Mann* (1880), 14 Ch. D. 419, and *Smerling v. Kennedy* (1903), 5 O.L.R. 430.

In *Lydney and Wigpool Iron Ore Co. v. Bird* (1883), 23 Ch. D. 358, Pearson, J., said: "If the defendant may apply from time to time for an increase of the amount of the security, why may not his original application be made at any time?"

Then should the security be for past as well as future costs?

That it may be required to cover both was held in *Brocklebank & Co. v. King's Lynn S.S. Co.* (1878), 3 C.P.D. 365, and in *Massey v. Allen* (1879), 12 Ch. D. 807, but in both cases the application was made promptly after the happening of the circumstance entitling the applicant to make it. Here the applicants knew of the non-residence throughout. From whatever motive, they chose not to apply for security; and I do not think that they should, in a case such as this, be now entitled to obtain it as to the costs which they knowingly ran the risk of being unable to recover.

I, therefore, as a matter of discretion in this case, limit the security to costs which have been or may be incurred in or by reason of the appeal; and I fix the amount at \$60 if paid into Court, or \$120 as the penalty if a bond be given. The security to be given within four weeks or the appeal to be struck out; a corresponding reasonable extension of time to be given the appellant in his appeal proceedings, which, if not agreed upon, I will fix.

Costs of the application to be costs in the cause.