success. But hope springs eternal in the human breast, and we shall look forward to ultimately breathing air at the Hall as pure as the administration of justice that goes on within its walls. In the meanwhile an immense deal would be gained by religiously opening the two small windows that do exist in the library, every evening, and leaving them open all night. Inasmuch as these windows open outward at a slant, there can be no risk of any rain entering which could do any appreciable damage.

COSTS WHEN DEFENDANTS SEVER.

The question of costs, when defendents sever in their defence, is one of much importance to the practitioner.

At Common Law there is usually no difficulty. For, speaking in general terms, if the alleged breach of contract or tort be a joint one they cannot sever, and if the contract be not joint, as in the case of an action against the maker and endorser of a promissory note, they may sever, and if successful, each be entitled to full costs of defence.

In Chancery, on the other hand, it is somewhat difficult at all times to say when defendant may or may not sever under the risk of losing costs, if successful. All parties connected with or interested in a single transaction must, in the same suit, be brought before the Court, or it will be defective for want of parties, but it is far from saying that they must be represented by the same solicitor, as their interests may be and often are diametrically opposite.

Possibly it may be assumed that the new procedure may affect this question, but practically it will not. It is true, under Order 50, judges may decline to allow costs or deal with them otherwise than they usually do. The effect of Order 50 is to give judges in all actions control over costs; a power which has always been inherent in the judges of the Court of Chancery.

Such a discretion has been and will be rarely exercised, and in cases where the defendant really has no merits or his conduct has been inequitable, and possibly in cases of hardship, or where the suit has been totally unnecessary.

It may also be here pointed out that the ordinary retainer of two or more defendants only enables the solicitors to claim from each his proper share of the costs incurred, and such a retainer is not a joint and several contract. It is the several contract of each client to pay his share only of costs incurred for the benefit of two or more defendants.

Any variation from this must be strictly proven: *Re Colquhoun*, 5 De G. Mac. & G. 35. The taxing Master certified to the Court in this case the practice of the taxing Masters of the Court of Chancery upon this point. See also *Harmon* v. *Harris*, 1 Russ. 155, 157. This may seem a hardship, but it would, on the other hand, be an undoubted hardship for the defendant to be liable for all costs incurred in all cases, and the solicitor has it always in his power to decline to proceed unless his costs are paid, or he be furnished with proper funds as the case progresses. It may be stated in general terms, that defendants representing the same interest must join in defending, and be represented by the same solicitor upon terms of being allowed but one set of costs, if successful; and that defendants who have identical but separate interests need not join.

Trustees and *cestuis que trust* should not sever: *Farr* v. *Sheriffe*, 4 Hare, 528. In *Wiles* v. *Cooper*, 9 Beav., 294, residence of trustees in different parts of the country justified them in severing, but this would not now be followed. See former case, where this case was not followed.

So mortgagors and mortgagees should not sever, and if they do, the mortgagee or assignee of a fund will be entitled to full costs