

THE CHARITABLE SPIRIT OF THE LAW.

views of Lord Selborne and Lord Justice James above given.

Again, when persons are made parties in a representative character, and have done no wrong, they are entitled to costs, and if costs are withheld, an appeal for that alone will be sustained : *Etherington v. Wilson*, L. R. 1 Ch. D. 160.

In *Re Chennell*, it was laid down by two of the judges that an order directing the payment of costs was not appealable merely because it specified a particular person or a particular fund by whom or out of which they are to be paid. This is opposed to earlier cases, and is the result of a construction placed upon one of the rules framed under the English Judicature Act.

When the Judge of the Court below placed on record on the face of the decree the reason why he ordered the plaintiff to pay the costs, and this was founded on the determination of a question of law, the Court of Appeal allowed the question of law to be argued, that it might determine whether the reason embodied in the decree was well founded : *Walker v. French*, 21 W. R. 493. Similar to this is the case where the judge below came to the conclusion that there had been a breach of an injunction, and on that ground ordered the defendant to pay costs. The Court of Appeal held that the defendant was not without a right of appeal, because these costs were not in the discretion of the Court : *Witt v. Corcoran*, L. R. 2 Ch. D. 69.

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The charitable spirit of the law appears not only in the special favour shown

by the Law to Charities, but also in many of the rules which form the Law of Evidence ; many of which might seem to be mere deductions from the apostolic dictum, " Charity thinketh no evil."

One most striking instance of this spirit appears in the strong presumption of the law against crime and illegality—that presumption which gives the benefit of the doubt to the accused. The rule with regard to this in criminal cases is emphatically stated by Baron Martin in *Reg. v. White*, 4 Fost. & Finl. 383 (1865). The indictment was for scuttling a ship with intent to defraud. Baron Martin told the jury that in order to enable them to return a verdict against the prisoner, they must be satisfied beyond any reasonable doubt of his guilt ; and this as a conviction created in their minds, not merely as a matter of probability. In a note annexed to the report of this case, the reporters point out that, although this is the real rule of law as to the sufficiency of proof in criminal cases, yet of late (as in the case of *R. v. Muller*, C. C. C. 1865) there had been observed a disposition to contract its application, and even to substitute for it a much looser rule. The reporters then quote the words of Gurney, B., to the jury in *Belamy's case*, C. C. C. 1844 : " If you think the case has left you in doubt so that you cannot safely convict, you will remember that it is better that many guilty men should escape than that one innocent man should perish : " and they maintain that this is the rule laid down by every judge from Hale to Gurney.

Such, then, is the presumption of innocence in the criminal courts. Some authorities would lead us to suppose that this so strong presumption on the subject is confined to those courts. Thus in *Magée v. Mark*, 11 Ir. C. L. 453 (1861),—an action for penalties under the Cor-