

costs. Instead of dividing them in half, the court below might have divided them unequally between the parties. It was a matter of discretion for the court, and unless it clearly appears that its decision is unreasonable, there is no ground upon which this court ought to interfere. An invariable series of decisions confirm this view.

"While the case was under consideration by this court, the learned counsel for the petitioner made known to us the decision of the Court of Appeal, confirming the decision of the Court of Review in the case of *Daigle vs Noël* (35 S. C., 341; 1 K. B., 575). In the case referred to, the reason given by the first court for not giving costs in favor of the successful party was that, after denying the respondent's possession — it was a possessory action — he alleged that he himself had been in possession, but had failed to prove his allegation of possession. It seems to us that the Court of Appeal and the Court of Review were fully justified in deciding that there was not sufficient reason in that why the appellant should not have costs in his favor, because he might have rested his case by denying the possession invoked by respondent and would have succeeded just the same in winning his case.

"The special reasons given in the present case are far different. Each of the parties set up pleas in law which were unfounded; each succeeded as to part only of his pleadings. It appears to me that under these circumstances the court of first instance could, without over-riding the provisions of article 549, C. e. p., exercise its discretion in deciding the question of the payment of the costs. The case of *Daigle vs Noël* is not a parallel one, and, not finding the circumstances the same, I do not think I should change the opinion I have already expressed.

"I am, therefore, of opinion to confirm the judgment, with costs.