

## COSTS IN CASES OF APPEAL—LICENSE IN CROSS EXAMINATIONS.

In respect to re-hearings in Chancery, the practice in this Province appears to be somewhat changing in allowing the party who successfully re-hears to obtain all his costs. This seems in part to be due to the influence of the judge last appointed to the equity bench, Vice-Chancellor Blake, who has frequently taken occasion to express his views that in all cases costs should follow the result, and that an error of the judge of first instance should not protect the party who profits by it from paying all the costs in the long run, if the full court reverses the judgment below. The last reported decision in re-hearing, *Dalglish v. McCarthy*, 19 Grant, 578, exemplifies these remarks. There the court allowed the appeal with costs, Blake, V. C., citing the language of the late Lord Westbury in *Bartlett v. Wood*, 9 W. R. 817, where he says, "I have had occasion to observe upon the general rule, and it is one from which, most undoubtedly, so far as I am concerned, I shall seldom depart; namely, that in contentious cases, the costs of the litigation must be considered as following the result of it."

It may be well to note that the same volume of reports contains an able decision of the Chancellor in *O'Donnell v. Black*, 19 Gr. 623, where the general question as to the principle on which costs should be awarded to successful litigants is discussed.

Upon the whole, the courts of Ontario may be said to have come to the conclusion that all appellants who succeed in their appeals should, as a consequence, obtain complete success, by having awarded to them their costs of appeal, except in the highest court of the Province, where the rule of the House of Lords is yet followed. It is desirable, in our judgment, that the practice of the Court of Error and Appeal should be reconsidered, or that a general order should be

passed touching the costs of appeal which would render the disposition of these costs uniform in all the courts.

## SELECTIONS.

## LICENSE IN CROSS EXAMINATIONS.

Some instances of cross-examination to credit have recently occurred which must have suggested very generally that the prevailing license is apt to be grossly abused. The *Pall Mall Gazette*, whose representative in legal matters is Mr. Fitzjames Stephen, has handled the subject scientifically, and, we need hardly add, adduced an illustration connected with the Indian Evidence Act. The writer is afraid to mention the cases upon which his article is based, but he evidently refers to the cross-examination of Lord Bellew, who, having given evidence as to the tattoo marks in a celebrated pending trial, was asked in cross-examination whether he had ever acted dishonourably concerning another man's wife and cruelly to his own. In another case the victim of a seduction was asked a series of most offensive questions in cross-examination with a view to show that she had previously been unchaste. No evidence was called to support this cross-examination, and Mr. Justice Honyman condemned it in unmeasured terms. For the benefit and instruction of attorneys and counsel let us hear what a high-class thinker, and a man of unblemished character, says on the subject:—"The client," says the writer above named, "tells his attorney some lie about a witness against whom he has a spite. The attorney passes it on to the counsel, and unless the counsel is a man both of experience and principle, he is but too apt to regard this, however wrongly, as an instruction which relieves him from all responsibility in the matter, and compels him to throw in the face of the witness an insult which may not only deeply wound his or her feelings, but permanently injure his or her reputation. We do not at all forget, nor are we disposed in any degree to underrate, the good feeling and principle of legal practitioners, or the influence of the Bench in checking abuses of their legal powers. No lawyer in either branch of the profes-