vance a deposit to meet his fees, and those going to the fee fund, for the proceedings to be taken in each suit. See the note in O'Brien's Division Courts Act, on secs. 49 and 50 of that Act.

It was argued that the words "costs of appeal," and the words "costs of the court," in the above section referred, the former to the appellant's or respondent's costs, and the latter to the costs of the Clerk and fee fund, but I think they both clearly mean the same thing, viz., costs taxable to the Clerk and fee fund under the schedule mentioned in that section, for there are, as remarked, no costs taxable in Division Courts to either plaintiff or defendant, under the schedule referred to, nor on any proceedings in the court, and the section provides that each party shall bear his own witness fees, so that the respondent would not be entitled to any costs. The 28th section of the Act of 1853, provided that the costs of the court should in all cases be borne by the appellants, and this is the reason, I think, why he was required to deposit the $2.00. The deposit there being a security to the Clerk he may insist upon its being paid in advance in the same manner as the 49th and 50th sections of the Division Court Act require the fees of all proceedings to be paid to him in the first instance. But if he choose to waive it, or as in this case to take the security of the appellant's attorney, I think he may do so, and the legality of the proceeding is not affected thereby. The Clerk here takes the guarantee of a third party as payment of the $2.00 going to him. As far as all other parties are concerned, it is, I think, a payment, and the statute is satisfied.

I have not found the second objection so difficult to dispose of (see sec. 60, sub-secs. 13 and 14, and sec. 61 and 63 of Assessment Act). I do not entertain any doubt but that the final passing of the Roll by the Court of Revision, as provided by the 61st sec. of the Act, is a *decision* by that court of every appeal properly lodged before it, and that an appeal lies from such decision to the County Judge by any party dissatisfied with that decision, as provided by the 63rd section of the Act (see *In re County Judge of Perth and J. L. Robinson*, 12 U. C. C. P. 252.) Where a party lodges an appeal he ought in good faith to appear at the proper time and support his appeal, and if he does not do so the court may decide his case *ex parte* against him, but the statute would still give him the right of appeal if dissatisfied with that decision, and I do not think that right is lost from the fact that he did not appear in the court below and maintain his case there. Sec. 60, sub-sec. 13, implies, I think, that it is optional for the appellants to produce witnesses before the Court of Revision or not, and sub-sec. 14 provides that if they fail to do so the court may proceed *ex parte*.

I am glad that I have been able to come to this conclusion, as I should have regretted had the rights of the parties before me been disposed of upon a preliminary objection, without an enquiry into the merits, although it would have relieved me of a great deal of labor which I am not just now very able to perform. I have endeavored to give due weight to the forcible arguments of Mr. Harrison, on behalf of the respondents, but have not been able to agree in the conclusions he has come to, and I have felt it right when I have been in doubt to lean to such a construction of the statutes as would not shut the parties out from having their cases investigated before me. And on the authority of the case cited by Mr. Hardy, *In re Justices of Peel*, 13 U. C. C. P. 159, I have thought that in a doubtful case a party should not be deprived of his right of appeal.

ENGLISH REPORTS.

CHANCERY.

BOOTH V. ALCOCK.

Light and air—Lessor and lessee—Grant of lights—Injunction.

The court will restrain a landlord from interfering with his tenant's lights, although the diminution of light is not great, and although if the contest were merely between neighboring properties, the court would only award damages.

The defendant being lessee of properties A. and B., granted an underlease of A., "together with all lights," to the plaintiff. He subsequently acquired the fee in B.

The court restrained him from so building upon B. as to interfere in any way with the lights of his lessee of A.

[March 20, 1873.—28 L.T.N.S. 221.]

By indenture dated 31st Aug. 1864, the defendant underleased to the plaintiff for the term of twenty-one years a messuage, No. 26, Old Change, in the city of London, "together with all edifices, buildings, ways, lights, sewers, water-courses, rights, easements, advantages, and appurtenances." The lease contained a covenant for quiet enjoyment. At the time of granting the underlease the defendant was himself lessee of the messuage, for the term of eighty years, and was also assignee of an underlease of an adjoining messuage and premises in