COSTS IN CASES OF APPEAL.

The two highest English tribunals to which colonial courts are wont to look for guidance are at variance on the important question as to the principle to be adopted in awarding costs of appeal to a successful appellant. The difference was tersely pointed out by Lord Cairns in *De Vitre* v. *Betts*, 21 W. R. 705, as follows: "The rule is, in this House (the House of Lords), that where an appellant, in succeeding, corrects a miscarriage of the court below, he is not entitled to the costs of the appeal, because the respondent in such a case is merely seeking to retain the advantage which he has obtained. The rule of the Judicial Committee of the Privy Council is, generally speaking, to give the successful party the costs of the appeal; and I own I consider the rule of the Privy Council on the whole the better rule of the two." The Court of Error and Appeal for this Province has always followed the practice of the House of Lords; and when some members of the court in the Goodhue case were, perhaps inadvertently, about to give their decision that the appeal should be allowed *with costs*—yet, on the remonstrances of counsel for the respondents against the innovation, the court gave effect to the general rule of practice, and simply allowed the appeal.

As to appeals from County Courts to the Superior Courts of Common Law, the practice now prevails here, as in England, of allowing such appeals with costs. We commented upon the change of practice in this respect in 8 C. L. J. N. S. 133.

Appeals to the Court of Chancery from inferior courts are but few and far between. For the most part they arise under the Insolvent Act, and we think the practice may now be considered as well-settled that the costs in such cases will usually follow the result. A distinction is to be observed between the Act of 1864 and that of 1869, now in force, as to the provisions respecting the costs of appeals. Sub-sec. 6 of sec. 7, of the former Act, provided that the costs in appeal were to be in the discretion of the court appealed to. In the latter Act this provision is altogether omitted, and no reference is made as to awarding costs in appeal, except in cases where the appeal is not duly prosecuted. Under the former Act, the usual course was to allow or dismiss the appeal with costs, and the same rule has been generally observed under the present Act. See *Re Williams*, 31 U. C. Q. B. 153. We understand that the right or jurisdiction of the appellate court to award costs in insolvency appeals was argued before Vice-Chancellor Strong in an unreported case, *Re Patterson* (January, 1873). The learned judge held that the court had power to deal with the question of costs upon allowing an appeal, and that, in his view, the practice of the Privy Council was preferable to that of the House of Lords, and in a colonial court was to be followed under analogous circumstances, as being the practice of the court of last resort for colonial appeals. Acting upon this opinion, he allowed the appeal, and awarded against the respondents all costs, both in the court below and in the Court of Chancery on the appeal. The Vice-Chancellor appears to be in accord with the views of Lord Cairns, subsequently expressed, as to the rule of the Privy Council being more satisfactory than that of the Lords; and from late decisions we observe that Malins, V. C., appears to be of the same opinion. In *Ashley* v. *Sedgwick*, 21 W. R. 455, he held that in appeals from a County Court where the subject-matter in dispute is small, the court will, in its discretion, give a successful appellant his costs, both in the court below and of the appeal. And so he also decided in *Booth* v. *Turle*, 21 W. R. 721.