

COUNTY COURT APPEALS.—CHANGING THE VENUE.

COUNTY COURT APPEALS.

In cases of appeal from the County Court, we observe that the Court of Queen's Bench, in *Eddy v. The Ottawa City Passenger Railway Co.*, 31 U. C. Q. B. 569, have laid down two important rules of practice, one of which is new, the other old enough to be better observed than it seems to be. The Court has again declared that in future appeals will not be heard unless the grounds of appeal are entered on the appeal books when delivered. This rule should now possess great cumulative force, as it was first brought prominently into notice in *Smith v. Foster*, 11 C. P. 163; afterwards in *Portman v. Patterson*, 21 U. C. Q. B. 237; and its effect suspended, as a last act of grace, in *Severn v. Toronto Street Railway*, 23 U. C. Q. B. 254. Still the profession had better not presume any further upon the clemency of the Bench. Although the Judges are extremely unwilling to punish the client for the carelessness of his attorney, yet, on principle, it is better that a few individuals should suffer than that the regulations of the Court should be persistently disregarded. Perhaps the better course would be for the officer of the Court who receives the appeal books and enters the appeal, to reject all books not in proper form.

The new practice of allowing such appeals with costs is a beneficial change, which we are glad to see adopted in this country. Such is the almost universal English practice; and we take it to be extremely reasonable, in all cases of appeals from inferior Courts, as well as from subordinate judicial officers of the superior Courts, that costs should, in all but certain exceptional cases, follow the result. Besides the authorities given in the note to 31 U. C. Q. B. p. 576, the following cases may be referred to as showing the rule of the common law Courts in England: *Taylor v. Great Northern Railway*, L. R. 1 C. P. 430 (costs should be asked when the appeal is disposed of; an application afterwards will not be entertained, unless, perhaps, it be made during the term); *Budenburg v. Roberts*, L. R. 2 C. P. 292.

When the Chamber order of a Judge is successfully appealed from to the Court, costs are never given on setting aside the order, out of deference to the Judge's opinion: *Baylis v. LeGros*, 2 C. B. N. S. 332, per Cresswell, J.

SELECTIONS.

CHANGING THE VENUE.

The case of *Church v. Barnett and another*, reported in the May number of our Reports (40 Law J. Rep. (N.S.) C. P. 138), enables us to offer some comments on the practice of changing the venue in actions at law, at the instance of the defendant—comments rendered necessary by the conflict of opinion hitherto expressed on the subject, and by the inaccurate statements put forward in "Chitty's Archbold's Practice." Before the year 1853, if the plaintiff brought a transitory action in any other county than that in which the cause of action arose, the defendant, upon an affidavit "that the plaintiff's cause of action (if any) arose in the county of B. and not in the county of A." (where the action was brought), "or elsewhere out of the said county of B." could have the venue changed, as of course, to the county where the cause of action really arose. This affidavit, which was called the common affidavit, was sufficient in the great majority of actions, but there were certain actions in which special reasons for changing the venue had to be shown by a defendant. Where the plaintiff laid the venue in the county where the cause of action arose, an order for changing it would only be made where it was clearly made out, either that the defendant could not have a fair trial in the county, or that an immense saving of expense would be achieved by the change sought. Then came Rule 18, Hilary Term, 1853, in these words: "No venue shall be changed without a special order of the Court or judge, unless by the consent of the parties." The intent and meaning of this rule was discussed on June 10 in the same year in *De Rothschild v. Shilston*, 8 Exch. 503, 22 Law J. Rep. (N.S.) Exch. 279. In the argument of that case, Baron Parke said that the new rule was intended to put a stop to the practice of changing the venue, as a matter, of course by a sidebar rule, and of bringing it back again by an undertaking to give material evidence; and that, according to the rule, no venue could be changed except upon special application to a judge. Mr. Justice Willes was counsel on one side in *De Rothschild v. Shilston*, and the present Attorney-General was counsel on the other side. Mr. Willes had obtained a rule nisi to rescind an order of Baron Platt for changing the venue from London to Devonshire, the order proceeding merely on an affidavit that the cause of action arose in Devonshire and not in London, to which affidavit there was no answer. The Court discharged the rule, thinking that the affidavit being unanswered was sufficient, and that the order was right.

The Lord Chief Baron, in delivering the judgment of the Court, said:—

"The general rule on this subject may be thus stated, and we may say that we believe