

HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

JANUARY 26TH, 1912.

*RE STURMER AND TOWN OF BEAVERTON.

Costs—Power of Court to Make Real Litigant Pay Costs—Unsuccessful Application to Quash Municipal By-law—Nominal Applicant—Judicature Act, sec. 119.

Appeal by Hamilton from the order of Boyd, C., ante 333, 25 O.L.R. 190, requiring the appellant to pay certain costs, amounting to \$384, to the Corporation of the Town of Beaverton.

The appeal was heard by CLUTE, LATCHFORD, and MIDDLETON, JJ.

G. Lynch-Staunton, K.C., for the appellant.

W. E. Raney, K.C., for the respondents.

MIDDLETON, J.:—I think the judgment appealed from is clearly right. It is quite true that the jurisdiction of the Common Law Courts to award costs must in general be found in some statute; but it is equally a recognised exception to this general statement that a Common Law Court always had power to award costs against one unsuccessfully invoking the aid of its process, even when the Court had no jurisdiction to entertain the application: *Rex v. Bennett*, 4 O.L.R. 205; *Re Cosmopolitan Life Association*, 15 P.R. 185; *In re Bombay Civil Fund Act*, 40 Ch. D. 288. And the Court always had power to award costs against the real applicant when the motion was made by him in the name of a man of straw for the purpose of avoiding liability. The Courts were never so blind as to be unable to see through this flimsy device nor so impotent as to be unable to act.

The *Queen v. Greene* (1843), 4 Q.B. 646, has never been doubted. It determines: "Where a rule nisi for a quo warranto information is discharged, and it appears that the party making affidavit as relator is indigent and unable to pay costs, and was procured to make the application by another who is the real prosecutor, the Court will order the costs to be paid by the party so promoting the application." . . . This case also shews that the liability may be enforced in a summary way. Some question having arisen as to the material that should be read upon such an application, a Rule of Court was promulgated in Easter Term, 1843, dealing with this question: "In every case

*To be reported in the Ontario Law Reports.