

Ch. 53, 450 ; *The Queen v. Justices, etc.*, [1894] 1 Q.B. 453 ; *The Queen v. Jones*, [1894] 2 Q.B. 382 ; see also *The Queen v. Lee*, 9 Q.B.D. at p. 396, per Field, J.

Two cases are reported in which the English High Court, after the passing of the Judicature Act, gave costs, in one of them against the respondents on making absolute a rule nisi to quash in part an order of the Quarter Sessions : *Regina v. Goodall*, L.R., 9 Q.B. 557 ; and the other against the magistrate : *Regina v. Meyer*, 1 Q.B.D. 175 ; but both of these cases were before the decision in *In re Mills*, 34 Ch. D. 24, by which it was settled, contrary to what had been thought by some Judges, that the Judicature Act had not conferred on the High Court any new jurisdiction as to costs.

*Regina v. Parlbly*, according to the report of it in 22 Q. B. D. 520, at p. 528, would seem to be another case of the same class, but the statement made there that the rule was made absolute with costs is erroneous. The subsequent reports of the case, which have been mentioned, shew that the question of costs was not dealt with when the decision of the Court there reported was given, but was subsequently argued, when costs were refused on the ground stated in the subsequent reports.

In this Province costs have been awarded against the prosecutor in several cases. Most of them were decided before *In re Mills*, and in some of them the conviction or order quashed was for a penalty imposed by or under the authority of Provincial legislation, to which different considerations apply, at all events since the passing of the Law Courts, 1896, 59 Vict. ch. 18, sec. 2, sched. (35), by which the provision, which up to that time was contained in the Judicature Acts, by which proceedings on the Crown or Revenue side of the Queen's Bench and Common Pleas Divisions were excluded from the operation of those Acts, was repealed.

If the question to be determined were one of practice only, we should not feel justified in disturbing any settled practice that had been shewn to exist, but, as it is not of that character, but, as I have said, one as to the jurisdiction of the Court, and being of opinion that the Court has no jurisdiction to award costs in a criminal matter against the prosecutor, we are bound to disregard that practice and to give effect to that opinion.

Cases in which costs have been given against an unsuccessful applicant for a writ of certiorari or to quash are to be distinguished, for in such cases the Court has jurisdiction to give costs against the applicant, either because of the recognizance which he has entered into to pay the costs, or of the inherent power which the Court possesses to give