the Court," the Court now has "full power to determine by whom and to what extent such costs are to be paid:" sec. 119 of R.S.O. 1897 ch. 51. These words were added to get rid of the restricted meaning attached to the words of the earlier Act in In re Mills, 34 Ch. D. 24; and the Court has since then declined to apply any narrow construction to the amending Act: In re Fisher, [1894] 1 Ch. 450; In re Schmarr, [1902] 1 Ch. 326; Dartford Brewery Co. v. Moseley, [1906] 1 K.B. 462.

In re Appleton French and Scrafton Limited, [1905] 1 Ch. 749, is an instance in which the Court held that this statute enabled costs to be awarded to one not a party to the record.

The power conferred by this statute is one which must be exercised upon principle and in accordance with those rules that govern the exercise of all judicial discretion, and in no harsh and arbitrary manner; but where, even in the old cases, it is said that justice and equity point to the propriety of an order in such cases as this, and the Court laments the absence of jurisdiction, there can be no reason, now that jurisdiction is conferred by the Act, why the Court should be slow to exercise it in proper cases.

One is inclined to wonder at the timidity of some of the earlier Judges and to admire the robust sense and courage of Lord St. Leonards, who, in a somewhat similar case (Burke v. Lidwell, 1 Jo. & Lat. 703), after commenting upon the highly improper conduct of those who induced the pauper plaintiff "to allow his name to be made use of as the plaintiff in this suit for the fraudulent purpose of avoiding payment of costs," said: "Can there be a fraud which the Court ought to visit more strongly than the conduct furnished in this case, in which, to avoid the payment of costs of a doubtful litigation, to which the plaintiff might be made liable, the real plaintiff procures a pauper to become the nominal plaintiff . . .?" What was there sought was security for costs; and it was argued that there was no power in the Court of Chancery to make such an order, and no precedent for it, though that remdy was well known at law. "Then comes the question, have I the power to act in accordance with my opinion? It would be a reflection upon the administration of justice if I had not such a power. I am clearly of opinion that I have that power, and I am prepared to exercise it, and to make a precedent if none exists." Can it be doubted that Lord St. Leonards would have made the order now asked?

CLUTE, J., gave reasons in writing for the same conclusion. He referred to some of the cases cited by MIDDLETON, J., and