in which the Court shall grant a rule . . . to compel any person not a party to an original rule to pay the costs of such original rule," etc. Thus in the year 1843 the Common Law Courts, not only by decision, but by general Rule, asserted the jurisdiction in question.

It is said with much force that the cases shew that the jurisdiction to award costs against a landlord who defended an ejectment action was always regarded as an exception to the general rule that the Court had no power save over parties to the record, and that this exception was based upon the peculiar practice in ejectment. Undoubtedly, this is said in so many words in Hayward v. Giffard, 4 M. & W. 194; but I can only regard The Queen v. Greene as a deliberate refusal to recognise this limitation to the general power of the Court. . . .

[Reference to Mobbs v. Vandenbrande, 33 L.J.Q.B. 177; Hutchinson v. Greenwood, 24 L.J.Q.B. 2; Hearsey v. Pechell, 8 L.J.N.S. C.P. 247, 5 Bing. N.C. 466.]

In this case it is not said that Hamilton "merely has an interest in the suit;" it is said and shewn that it his suit, and that he has been guilty of something in the nature of barratry and maintenance, because, desiring to try his own right, he has procured this man of straw to allow the litigation to be brought in his name. This, as the cases shew, is an abuse of the process of the Court, and, I think, a contempt of the most serious character, because the Court which is called into existence to administer justice is being used as a tool and instrument by which an injury is inflicted which, it is said, it can in no way redress.

In Chancery there never was any such limitation suggested as to the power of the Court over costs. The books contain many references as to the mode in which payment of costs may be enforced against persons not parties to the suit (*e.g.*, Sanger v. Gardner, C.P. Coop. 262; Attorney-General v. Skinners' Co., ib. 1); but, singularly, do not contain, so far as I can ascertain, any case in which the foundation of that jurisdiction is discussed or the principles by which the discretion of the Court is governed declared.

Courts of Equity, it is said, have in all cases awarded costs "not from any authority but from conscience and *arbitrio boni viri*:" Corporation of Burford v. Lenthall, 2 Atk. 551. See, also, Andrews v. Barnes, 39 Ch. D. 133.

But, quite apart from any consideration of the law and practice before the Judicature Act, as now amended, I think that that Act makes our jurisdiction clear. In addition to the power originally conferred, which made all costs "in the discretion of