Beaty shewed cause in the first instance, and contended that as the award directed "that the plaintiff and defendants should each pay half the costs of the cause," that the decision of the Master was correct, the words "costs in the cause" having a technical meaning, and meaning only the costs of the successful party in the cause. That the Master had decided correctly in taxing only the plaintiff's costs in the cause and charging half of it to the defendants, the award substantially being in favor of the plaintiff. That as to the arbitrators' fees *prima facie* they were correct, and the Master was bound to take the same as correct until they were impeached, which could only properly be done by application to the court. He cited *Walton* v. *Ingram*, 5 Jur. 467; *Day* v. *Harris*, 1 Dowl. N. S. 353; Marshall on Costs, 198, 432, 434.

Lauder, in support of the application, contended that the costs of the cause in the award meant the whole of the costs, and that they should have been taxed and thrown into hotch-pot and then divided, each party to pay half. He further argued, that the arbitrators' fees could be taxed like any other item. He cited *Bates* v. *Townley*, 19 L. J. Ex. 399; 2 Chitty's Archbold, 11 edn. p. 1671.

RICHARDS, C. J.—In relation to the costs, the reference stated that the costs of the cause in the award and reference were to be in the discretion of the arbitrators. And the award on that point is as follows: "We also order and award that the plaintiff and defendants shall each pay half the costs of the cause, and that the defendants shall pay the costs of the reference and award, our costs of which reference and award as arbitrators we assess at the sum of two hundred and one dollars and fifty cents. Our said costs appearing in detail as follows:

Edwin H. Ruthland.

Attending meeting, December, 1860, 3 days.....	$24 00
Travelling expenses	23 00
Attending in March, 1861, 4 days	32 00
Attending in August, 1862, 4 days.....	32 00
Travelling expenses	33 00
Travelling expenses	15 00
	$159 00

Henry Waiter.

Attending meeting in March, 1861.....	$8 00
Travelling expenses	2 50
Attending in August, 1861	24 00
Travelling expenses	8 00
In all $201 50	

There is no doubt that the phrase "costs in the cause" generally means the costs only of the party who is successful in the cause; and when referring to the costs of the proceedings that take place before it is ascertained who may be the successful party, it is a convenient mode of referring to them; and when the successful party is known, the costs follow to him as a matter of course. But where the successful party is known, there is not the same necessity of applying the same meaning to the words. If it had been intended that the defendants should pay only half of the plaintiffs costs in the cause, it could have been so stated with little difficulty. If that is the proper view to take of the effect of the words used in the award, then the reference to the plaintiff paying any thing would be quite superfluous. If the arbitrators had simply awarded that the defendant should only pay half of the plaintiff's costs in the cause, that would be sufficient; but when they direct that each shall pay half the costs of the cause, if the whole costs both of defendants and plaintiff are not meant, I do not see how we can give effect to that part which requires the plaintiff to pay half of the costs. If the defendants are to pay half of the plaintiff's costs, and the plaintiff is to lose the other half and not to pay any thing, then the word "pay" has a different signification as applied to plaintiff and defendants, though used at the same time as applicable to both. There is really no paramount reason why this should be so; and full effect may be given to the words used, by deciding that the words mean the whole of the costs in the cause, plaintiff's as well as defendants'; and as all the issues but one in the cause are found for the defendants, this would give them the costs of those issues, and will help the interpretation I give to the words of the award.

I am therefore of opinion that the "costs of the cause," as referred to in the award, mean the whole of the costs, as well those of the plaintiff as the defendants.

As to the amount charged by arbitrators for their fees being subject to be taxed by the Master, there can now be no doubt. In *Roberts* v. *Eberhardt*, 32 L. Times Reports, 36, 28 L. J. C. P. 74, in the Exchequer Chamber, the present Chief Justice Earl said, in practice, the arbitrator usually obtains his fee from the successful party, by keeping his award until he is paid. * * The arbitrator cannot judicially decide the amount of his own fee, whether he specifies it in his award or demands it orally from the parties. If he pursues the usual course above suggested, the party made liable by the award may have the amount taxed, and then is liable to his opponent only according to the allocatur. * * * The decision of the arbitrator on his own costs is always subject to some review, because he may not decide finally in his own favor

Barnes v. *Hayward*, 1 H. & N. 742, seems an express authority in favor of the Master taxing the charges of the arbitrators. There the plaintiff paid the full amount charged by the arbitrators, and, on the taxation of the plaintiff's costs, the Master deducted £132 from the amount of the arbitrator's charges. The plaintiff moved for a rule to shew cause why the Master should not review his taxation and allow the plaintiff the full amount paid by him to the arbitrators. This the court refused to do. Pollock, C. B., said, "The plaintiff should not have paid an exorbitant demand. The Master acted rightly in disallowing these exorbitant charges." The defendant on the same occasion moved to revise the costs, with a view to their being further reduced; and on consulting with the Master, after cause shewn against it, the court ordered a revision on behalf of defendant.

In *Fitzgerald* v. *Graves*, 5 Taunton, 342, the arbitrator had awarded £121 to be paid to himself for arbitration fees This sum the plaintiff paid in taxing the costs in the cause. The item was objected to, but the prothonotory there as the Master here thought that as the sum had been awarded and paid, he had no authority to enquire into the unreasonableness of the amount. On a motion to review the taxation, the court made the rule absolute.

This case seems sustained by the later authorities. In *Dixie* v. *Alexandre*, 1 L. M. & P. 338, Baron Alderson, speaking of the arbitrator's fees, says, "If the defendant thinks them unreasonable, he should apply to have them referred to the Master, to be taxed in the same way as any other costs."

Threlfall v. *Fanshawe*, in the same reports, at p. 340, is an ably argued case and refers to many authorities on the point, though the decision of the case on some of the points is doubted in *Parkinson* v. *Smith*, 30 L. J. Q. B. 178; see also *Frinton* v. *Branson*, 20 L. J. Q. B. 17; *Rose* v. *Redford*, 10 W. R. 91.

The learned Chief Justice subsequently made the following order:—I do order that the Master review his taxation of costs in this cause, and that the whole costs of the cause, both of plaintiff and defendants, be taxed, and then that the whole costs be paid, one moiety by each party, in pursuance of such award; and I further order that, on such revision of taxation, the Master shall also consider, on such evidence as may be brought before him, the reasonableness of the arbitrators' fees, and tax the same as he shall think reasonable.

CROSS v. WATERHOUSE.

Practice—Compelling plaintiff to bring in the record for the purpose of having judgment entered—Judge in Chambers.

Held that a defendant who conceives he has a right to costs against a plaintiff, in consequence of plaintiff having recovered in a Superior Court an amount within the jurisdiction of an Inferior Court, is entitled to call upon plaintiff either himself to proceed to the entry of judgment, or to bring in the record in order that judgment may be entered by defendant.

Held also, that a Judge in Chambers has power to entertain the application and to make the order.

[Chambers, Feb. 11, 1864.]

Lauder obtained from Richards, C J, a summons, calling upon the plaintiff to show cause why the plaintiff should not bring in the Nisi Prius record in this cause, and have the judgment duly