on to a hearing; and if the bill be dismissed upon hearing, the defendant shall not have costs, because it was his fault to let it proceed." In conformity with this doctrine is the decision of Lord Hardwicke, in *Earl Thanet* v. *Paterson*, Barnard, 247. And, in like manner, we find in the note to *Mitchell* v. *Baily*, 3 Madd. 62, that reference is made to a MS. case in 1749, where a bill to which the defendant might have demurred, but did not, was dismissed without costs, on the principle that unnecessary delay and expense were occasioned by the defendant's mode of defence. In *Hill* v. *Reardon*, 2 S. & S. 431, the bill involved a consideration of the jurisdiction of the Court upon a somewhat novel question, and the Master of the Rolls, on this ground, and because the defendants might have taken the opinion of the Court by demurrer, dismissed the bill at the hearing without costs. So in *Jones* v. *Davids*, 4 Russ. 277, the short question was whether the plaintiff could claim as a specialty creditor, and as the defendant neglected to have this question disposed of upon demurrer, which he could have effectually done, he was refused costs upon a dismissal of the bill. In *Hollingsworth* v. *Shakeshaft*, 14 Beav. 492, the point in contest arose upon the construction of a will which was sufficiently presented in the bill, and no costs were given to a successful defendant who brought the case to a hearing instead of demurring.

The same views were entertained by Kindersley, V.C., who, in *Ernest* v. *Weiss*, 1 N.R. 189, dismissed the bill without costs, because the point on which he proceeded might have been raised by demurrer, and considerable expense saved thereby. To the same effect is *Webb* v. *England*, 29 Beav. 44, where the case was decided on the want of jurisdiction, and costs were refused, because it might have been equally well decided on demurrer. Again, where the plaintiff proceeded to interplead in a case in which, according to the rule of the Court, he was not entitled so to do, and the defendant, instead of demurring, came to interplead, the Court allowed each party to bear his own costs: *Cook* v. *Earl of Rosslyn*, 1 Giff. 167.

The rule of decision was somewhat modified in *Godfrey* v. *Tucker*, 33 Beav. 280, where Lord Romilly gave costs to about the same extent as if the objection had been taken by demurrer, although it would seem in that case the point on which the plaintiff failed was raised neither by demurrer nor by the answer. In *Nesbitt* v. *Berridge*, 32 Beav. 282, it was held that, though the bill contained charges of fraud against a defendant, he was not for that reason entitled to answer, if the bill was demurrable, and the Master of the Rolls refused costs where the defendant in such a case neglected to demur. This decision was followed by Mowat, V.C. in *Saunders* v. *Stull*, 18 Gr. 590.

After this current of decisions, all setting in the same direction, one is somewhat surprised to come across the views of Lord Justice James, in *Bush* v. *Trowbridge Water-Works Company*, L.R. 10 Ch. 461. He says: "I know of no rule that a defendant is obliged to demur, and run the risk that something may be picked out of the bill which will be enough to maintain it. If the plaintiff files his bill, and fails, he must pay the costs." The Lord Justice however goes on to explain the *ratio decidendi* of some of the older cases which were cited by saying: "A great many cases have been referred to where the Court was of opinion that there was some technical objection, or that there was some other point which might have been raised, and ought to have been raised, if the parties had acted reasonably by way of simple demurrer, which would have rendered the continu-