Wilde, C. J., *in Bowyer* v. *Cook*, concisely summed up the effect of this most difficult statute by saying, that "a plaintiff who recovers less damages than 40s., in an action of trespass or trespass on the case, is entitled to no costs unless the judge shall certify that the action was brought to try a right, or that the trespass or grievance in respect of which the action is brought, was wilful and malicious, except where the defendant has had a previous notice not to trespass."

Where there has been this notice, which must be made to appear on the record by suggestion, if necessary, in which case it may be remarked that the costs of an issue on the suggestion, would not fall within any existing enactment, (*Norwood* v. *Pitt*, 5, H. & N. 801), as the Act then does not apply, and no other act operating upon actions of trespass remains, the plaintiff is remitted to his full right under the Statute of Gloucester.

Again, where a certificate has been given under the 2nd section the Act is also rendered inoperative, (*Evans* v. *Rees*, 30 L. J. C. P., 16), and the plaintiff either falls under the scarcely more merciful restraint of the 21 Jac. 1, c. 16, sec. 6, which only gives as much costs as damages, or obtains his full costs.

In all other personal actions, excepting trespass and trespass on the case, where the verdict is for less than 40s. damages, the 43 Eliz., c. 6, still governs the right to costs.

So much for the present state of the legislation upon costs, as defined by the time-honoured quantum of 40s. damages. It certaintly is not so explicit as to render an attempt at simplification undesireable, even if there should be reason for continuing the existence of a limiting point, which has long ceased to have any practical significance.

Let us pass on to the next set of limiting statutes, namely, —the County Court and cognate Acts.

The modern County Court was established in 1846, by the 9 and 10 Vict., c. 95, and the 58th sec. of this act limited their jurisdiction, in respect of the amount in litigation, to cases where the debt or damage claimed is not more than £20. Over some of the cases within the class defined by sec. 58, characterised by certain circumstances of locality mentioned in sec. 128, the county courts were given a jurisdiction concurrent with that of the superior courts, while over the remainder, the county courts obtain exclusive jurisdiction (to use a somewhat incorrect but convenient adjective). Then following the example set by the 43 Eliz., c. 6, though not imitating its simplicity, the 129 sec. proceeded to exclude from the superior courts, on pain of losing costs, not all cases within the new county court jurisdiction, nor even all within its exclusive jurisdiction, but all contracts within the latter, together with so many torts within it as are defined by the circumstance, that the damages do not amount to more than £5.

Why the legislature should have thus attempted to separate actions for contract and tort, it is very difficult to conceive; the more so as they did nothing of the kind when fixing the superior limit of the county court jurisdiction. The learned judges of the Court of Queen's Bench lately, in *Tatton* v. *The Great Western Railway Company* (6 Jur., N. S., p. 800), expressed very strong opinions against the reality of this distinction; and that case illustrated in a remarkable manner the practical difficulty of observing it.

The latter part of the 129th sec., gave costs as between attorney and client to the defendant, in certain cases where the plaintiff did not obtain a verdict, unless the judge certified to the contrary.

This statute expressly left untouched, the question of costs in cases belonging to the concurrent jurisdiction, and impliedly in the case of judgment by default; it also provided, by judge's certificate, for a mitigation of the penalty in the other. However, as there was much practical inconvenience lying in the way of parties who wanted to avail themselves of these advantages, the provisions of this Act upon this point were superseded by the 13 & 14 Vic., c. 61.

The 1st sec. of the 13 & 14 Vict., c. 61, increased the higher range of the county court jurisdiction to £50, but it made no alteration in the £20 and £5 as determining the right to costs in the superior courts, so that cases triable in the county courts may now be separated into three classes:—

First, Those whose circumstances of locality, place them in the concurrent jurisdiction.

Secondly, Those not so distinguished, and where the amount recovered does not exceed £20 and £5, in contract and tort respectively.

Thirdly Those not so distinguished, and where the amount recovered lies between £20 and £50 in contract, and £5 and £50 in tort, inclusive of the latter limit in both cases.

There is no check whatever, provided by this act against bringing class three into the superior courts. If class two, or any resembling them, are brought there, no costs will be awarded unless the judge shall certify on the back of the record that it appeared to him at the trial, that the cause of action was one for which a plaint could not have been entered in a county court, or that there was sufficient reason for bringing the action in the superior court, or unless an order of court or of a judge in chambers be obtained, under the provision of sec. 13, and finally those of class 1, if brought in superior courts, and if only £20 or £5 be recovered, will also be awarded costs by an order under sec. 13, but not by a certificate. It must be added, that this Act expressly exempted judgment by default from deprivation of costs.

Whether the words "judgment by default," here used, are confined to actions of contract, or whether they extend to cases of tort, followed by an assessment of damages on a writ of inquiry is not clear. However as to judgments by default in actions of contract this doubt is now of no importance, for if the amount of damages claimed, and therefore recovered, does not exceed £20, the plaintiff is, by sec. 30 of statute 19 & 20 Vict., c. 108, deprived of costs, unless the court in which the action is brought, or a judge otherwise directs; and it has been held (*Heard* v. *Edey*, 1, H. & N., 716), that the effect of this is to remove default in an action on contract from the above exemption.

Previously to this change, sec. 13 of statute 13 & 14 Vict. c. 61, which provided in certain cases, a release by order of the court or judge from deprivation of costs, was repealed; and sec. 4 and statute 15 & 16 Vict., c. 54, substituted for it.

Thus we have in force four County Court Acts regulating costs in superior courts—one, the 9 & 10 Vict., c. 95, s. 129 giving costs as bewteen attorney and client to a successful defendant; another, the 13 & 14 Vict., c. 61, ss. 11 and 12, depriving a plaintiff of costs who obtains a verdict not exceeding £20 or £5 respectively unless the judge gives a certain certificate; a third the 19 & 20 Vict., c. 108, s. 48, places judgment, by default in the same position as the verdict just mentioned; and the fourth, the 15 & 16 Vict., c. 54, s. 4, enabling the plaintiff, in any of these cases, to get his costs restored to him under certain circumstances, by obtaining an order from the court or judge to that effect.

Analagous to the County Court Acts is the 15 Vic., c. 77, which re-organized the Sheriff's Court in the City of London and made it, in fact, the county court for a Metropolitan district. Secs. 120, 121, and 122, in effect, repeated the foregoing enactments of the County Court Acts relative to deprivation and restoration of costs in actions in the superior courts, merely placing the Sheriff's Court jurisdiction for that of the County Court's, among the facts to be certified by the court or judge, and making the disqualifying verdict "less than," instead of "not exceeding," £20 and £5 respectively. But the 119 sec., which appears to have found its way into the Act in a most unaccountable manner, introduced an additional restraint upon the plaintiff's right to costs. The only meaning that can be given to it (and even this construc-