question, or a battery could not have been proved, then of course we need not look for a certificate, for it is enough that those circumstancer could not have have existed, in deference to which the Legislature had shown themselves willing to allow costs; and one would suppose it should follow as a consequence that, having no pretence in the latter class of cases for a certificate, the plaintiff must equally lose his costs. Instead of that, however, the courts determined that whenever there could be no pretence in the nature of things for expecting or asking a certificate, then the plaintiff should have full costs, because he could obtain no certificate! This appears to have arisen from from the Legislature adopting too general a form of expression when they spoke of "other personal actions," meaning, perhaps, actions for torts to the person or personal property. The courts held that the Legislature could not have intended the statute to apply to all actions that are called personal actions, which would include all actions that are not real or mixed; and, therefore, restricted the meaning to actions of trespass in which title might come in question, or trespass in which a battery might be proved The consequence was, that if a plaintiff before the recent statute, to which we are now about to refer, brought trespass for taking a dozen of potatoes, he was entitled to full costs, so far as the statute was concerned, though he recovered only sixpence damages (per Robinson, C. J., in *Hawkes* v. *Richardson et al*, 9 U. C. Q. B. 229).

To remedy this state of things the statute 3 & 4 Vic. cap. 24 was passed. It recites the acts of Elizabeth and Charles, and that the evils which those acts were intended to remedy "doth still prevail and increase;" and for remedy, after repealing so much of the act of Elizabeth as relates to costs in actions of trespass or trespass on the case, and so much of the act of Charles the Second as relates to costs in personal actions, enacts "That if the plaintiff in any action of trespass or trespass on the case, brought or to be brought in any of her Majesty's courts at Westminster, &c., shall recover by the verdict of a jury less damages than forty shillings, such plaintiff shall not be entitled to recover or obtain from the defendant in respect of such verdict any costs whatever, whether it shall be given upon any issue or issues tried, or judgment shall have passed by default unless the judge or presiding officer before whom such verdict shall be obtained shall, immediately afterwards, certify on the back of the record or writ of trial or writ of inquiry, that the action was really brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action shall have been brought. or that the trespass or grievance in respect of which the action was brought was wilful or malicious; provided always, that nothing herein contained shall extend to or be construed to extend to deprive any plaintiff of costs in any action or actions brought for a trespass or trespasses over any lands, commons, wastes, closes, woods, plantations or enclosures, or for entering into any dwellings, out-buildings or premises, in respect of which any notice not to trespass thereon or therein shall have been previously served, by or on behalf of the owner or occupier of the land trespassed over, upon or left at the last reputed or known place of abode of the defendant or defendants in such action or actions."

This statute applies where a verdict is taken subject to an award (*Reid* v. *Ashby*, 13 C. B. 897; *Cooper* v. *Pegg*, 16 C. B. 264, 454; and see *Griffith* v. *Thomas*, 4 D. & L. 109), but the arbitrator may certify in the event of power being given him to do so (*Spain* v. *Cadell*, 8 M. & W. 129; *Bury* v. *Dunn*, 1 D. & L. 141). This statute, unlike that of Elizabeth, also applies, notwithstanding the payment into court of a sum exceeding forty shillings; and in such a case, if plaintiff obtains a verdict for a less sum than forty shillings beyond the sum paid into court, in the absence of a certificate, he will be deprived of costs (*Reid* v. *Ashby*, 13 C. B. 897). The fact of there being several issues on the record does not preclude the operation of the act (*Newton* v. *Rowe*, 1 C. B. 187). The judge has power to certify whenever the action is such that a question of right besides the mere right to recover damages might arise (*Morrison* v. *Salmon*, 9 Dowl. P. C. 387), and if such be the nature of the case, the court will not inquire into the exercise of discretion by the judge (*Shuttleworth* v. *Cocker*, 1 M. & G. 829; *Barber* v. *Hollier*, 8 M. & W. 813; *Bury* v. *Dunn*, 1 D. & L. 141). It is sufficient if the action is really brought to try a right, whether it is fitted for that purpose or not (per Maule J., in *Morrison* v. *Salmon*, 9 Dowl. P. C. 387). The proviso of the act includes trespasses by continuing after notice (*Bowyer* v. *Cook*, 4 C. B. 236). In cases within the proviso, the proper mode of obtaining costs is by entering a suggestion on the record that the trespass was committed after notice (*Ib.*) This suggestion is traversable (per Parke, B., in *Sherwin* v. *Swindall*, 12 M. & W. 786; *Watson* v. *Quilter*, 11 M. & W. 760), and leave to enter a suggestion may be obtained after the trial, although the judge has refused to certify (*Bowyer* v. *Cook*, 4 C. B. 286).

The Legislature of Upper Canada, in 1853, adopted the 3 & 4 Vic. cap. 24, without, however, in direct terms interfering either with the statute of Elizabeth or statute of Charles (16 Vic., cap. 175 sec. 26; Con. Stat. U. C., cap. 22 secs. 324, 325). It would have been a wiser course for our Legislature, when they applied themselves to the subject, to have, in express terms, repealed the statutes of Elizabeth, James and Charles, which have given rise to