

costs occasioned by the counter-claim; and that the costs saved by reason of the defendant not having to issue a writ or take other proceedings which would have been necessary in a cross action, are not to be taken into account, nor is any deduction to be made from the plaintiff's costs of the action on that account, but any costs incurred both in support of the defence and the counter-claim, or in support of the plaintiff's claim and in opposing the counter-claim, must be apportioned. Where there are no separate issues requiring special treatment, the cost of the defence are costs of the action, and costs attributable to the counter-claim are costs of the counter-claim.

LUNACY—JURISDICTION OVER ESTATES OF LUNATICS—CONDITIONAL DEVISE TO LUNATIC—PERFORMANCE OF CONDITION BY LUNATIC TO ENABLE HIM TO RETAIN ESTATE DEVISED—STATUTE DE PREROGATIVA REGIS. (17 EDW. 2, C. 10.)

In re Sefton (1898) 2 Ch. 378, an application was made to the Court to authorize the committee of a lunatic to execute a settlement of a certain estate which he held in base fee, in order to enable him to retain a devise of the lands which had been made to him subject to the settlement being made. The Court (Lindley, M.R. and Chitty and Collins, L.JJ.) were clearly of opinion that it would be for the benefit of the lunatic that the settlement should be made, and the only question was whether the Court was precluded from ordering it to be made by the old statute *De Prerogativa Regis* (17 Edw. 2, c. 10) which ordains that the lands of lunatics are to be safely kept to be delivered to them when they become of right mind "so that such lands shall in no wise be aliened." But the Court was of opinion that the statute, although it had been very strictly construed in the past, did not prohibit such an alienation as was in contemplation here, which was in fact giving up a small piece of his estate in order that he might retain a much larger piece, and to hold the contrary, they thought, would be still further narrowing the construction of the Act, and an abuse of the Act, and not carrying it out according to its true intention. The settlement was therefore ordered to be made in accordance with the conditions of the devise.

RAILWAY COMPANY—COVENANT FOR QUIET ENJOYMENT.

In *Manchester, Sheffield & L. R'y v. Anderson* (1898) 2 Ch. 394, the plaintiffs sought to recover rent as owners of the reversion of a lease under which the defendant held. The defendant counter-claimed for damages for breach of the covenant for quiet enjoyment