Hughes, Co. J.—The 24th section of the Division Court Act of 1850* requires the plaintiff in any suit brought in a Division Court, to enter "a copy of his account or demand, in writing, in detail, and the particulars of his demand in any case of tort or trespass which shall be numbered," &c., and then, after providing for a summons, the clause requires that a copy of the summons, to which shall be attached a copy of the plaintiff's account or of the particulars of such demand, as the case may be, shall be served ten days, &c.

Then the 26th section† enacts "that it shall not be lawful for any plaintiff to divide any cause of action into two or more suits for the purpose of bringing the same within the jurisdiction of a Division Court," &c.

The 26th section, I apprehend, was to restrain parties from bringing several suits for a cause of action or items of account amounting in the aggregate to more than £25, which is the ultimate limit of the jurisdiction of the Court for the recovery of a debt account, or breach of contract or covenant, or money demand, or to recover damages for torts amounting in the aggregate to more than £10—which is the utmost limit of the jurisdiction for torts—by splitting up their cause of action and bringing two or more suits in order, apparently, to give the Court jurisdiction, and thereby avoid the limit of jurisdiction fixed by the 23rd section of the act,‡ which enacts that the judge shall have power, jurisdiction, and authority to hold plea of all claims and demands whatsoever, &c., of debt account, or breach of contract or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed shall not exceed the sum of £25, and in all torts to personal chattels to, and including the amount of £10; with certain exceptions and provisions thereinafter expressed.

The jurisdiction of the Court has been since extended to other personal actions, to which it is not necessary to allude in the present case.

It becomes now necessary to enquire how the 26th section affects the present case. I think it refers only to actions where the claims or demands of two or more suits for the recovery of a debt account, or breach of contract or covenant, or money demand, would, when added together, amount in the aggregate to more than £25, or where for a tort the aggregate would amount to more than £10; and where they are "split up for the purpose of bringing the same within the jurisdiction of a Division Court," and that that section does not affect the present case, because the aggregate of these two suits would not amount to more than £15, this being a suit, as it is expressed in the summons, "for damages on contract," and the former being also upon a contract for "the use and hire of cattle," as upon an ordinary action of assumpsit or debt. So that it cannot be said the cause of action has been "split" or divided, as expressed by the statute, for the purpose of bringing the same within the jurisdiction of the Division Court.

It may be useful to state what I conceive the law to be generally, upon this subject, to guide suitors as well as myself in future cases, for the sake of uniformity in so far as the Courts of this County are concerned, and also to give my judgment as I take the law to affect this particular case, irrespective of the Division Court Statutes.

Wherever I have found parties bringing two suits when one might have sufficed, and thereby subjecting a defendant to the hazard or possibility of paying the costs of two plaints instead of one, and where one would have answered every purpose, I have uniformly exercised the discretion given to the judge by the 3rd section, by apportioning the costs between the parties in such a manner that the plaintiff was obliged to pay half the costs, and indeed, in one case, where it was manifest that a third party's name had been used as a plaintiff in order to oppress a defendant with the costs of a second suit, where the real *bona fide* holder of a note had indirectly split up his cause of action and brought one in his own name and another in the name of a third party, I ordered the plaintiff to pay the costs in one of them.

It has been a matter of discussion in the Superior Courts in England, as to what is meant by statutes in England containing similar provisions to our own, by "dividing a cause of action," and what is meant by the words "cause of action."

The Court of King's Bench in England, in the case of *Bagot* v. *Williams*, 3 B. & C. 235, had this subject before them. It was an action of assumpsit for money received as steward of the plaintiff. The defendant pleaded a recovery in a former action of debt of £4,000, which he alleged to be for the identical causes of action in that suit. This was denied. It appeared by the evidence of the steward who succeeded the defendant, that he investigated defendant's accounts and found there was due plaintiff £7,000; that in the estimate he took into account all the sums claimed on the then present action, except a sum of £45 which the defendant had received previous to the first suit, but that he had only discovered it since the recovery in the first suit; after he had investigated the accounts, he directed an action to be brought in an inferior local court for £4,000, and judgment passed by default. He verified only for £3,400, because the defendant (as he then thought) had not any property exceeding that sum. Upon these facts the learned judge was of opinion, that whatever constituted a subsisting debt at the time when the proceedings in the inferior Court was instituted, and was known to be so by the agent who managed the whole transaction, was to be considered as included in and constituting one entire cause of action, and he therefore directed the jury to find a verdict for the plaintiff for £45, but reserved leave to the plaintiff to increase the verdict as the court should afterwards direct. The Court upheld this view, and Bayley, J., held that the plaintiff by his own act was as equally bound as he was by the verdict of a jury, and that having chosen to abandon his claim once, he had done it forever.

It is laid down in 2 Taylor on Evidence as a general rule, which is recognised alike by Courts of law and equity, that where a given matter becomes the subject of litigation in, and adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matters which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have from negligence, inadvertence, or even accident, omitted part of their case.

The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belongs to the subject of litigation, and which the parties exercising reasonable diligence might have brought forward at the time, *Henderson* v. *Henderson*, 3 Hare 113. It has been held, in the United States, that if a plaintiff sues for part only of an indivisible claim, as if one sues another for a year under the same hiring and then brings an action for a month's wages, it is a bar to the whole (1 Wendell's Reports 487). On page 1314 of first volume Taylor says, "The original County Court Act contains an important clause relative to this subject, for it enacts in section 63, that it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the County Courts, but any plaintiff having cause of action for more than £50, for which a plaint might be entered under this act, if not for more than £50, may abandon the excess, and therefore the plaintiff shall, on proving his cause, recover to an amount not exceeding £50, and the judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly. The term 'cause of action' here employed, is one of indefinite import, but the Courts have fixed its meaning to a certain extent by holding, first, that it is not limited to a cause of action on one separate entire contract, but that it extends to trademen's bills where the dealing is intended to be continuous, and where the items are so far connected with each other that if they be not paid they form one entire demand (*In re Akroyd*, 1 Ex. R. 479 is cited), and next, that it does not preclude the plaintiff from bringing distinct plaints whenever the claims are of such a nature as would justify the introduction of two or more counts in the declaration, if the action were brought in one of the Superior Courts."

In conformity with this, a landlord has been allowed to sue his

* Con. Stat. U. C. ch. 19, sec. 24, p. 147. † Con. Stat. U. C., ch. 19, sec. 59.
‡ Con. Stat. U. C., ch. 19, sec. 55.