beyond the sum paid into court (*Richards* v. *Black*, 6 C. B. 443). The certificate, in cases where it is proper to grant it, need not be granted immediately after the trial (*Holland* v. *Gore*, 3 T. R. 38 *n*; and see *Woolley* v. *Whitby*, 2 B. & C. 580; *Johnson* v. *Stanton*, *Ib.* 621), and where a verdict is entered for plaintiff pursuant to leave reserved the judge who tried the case may then certify to deprive the plaintiff of costs (*Richardson* v. *Barnes*, 4 Ex. 128). If the certificate be not applied for at the proper time, it cannot be granted after judgment and execution; but in such a case the court may, if so disposed, set aside the judgment (*Lyons* v. *Hyman*, 5 Ex. 749). But if the judge, at the trial, express his intention of certifying, the certificate may be indorsed on the postea, after judgment and taxation of costs (*Foxall* v. *Banks*, 5 B. & A. 536; *Davis* v. *Cole*, 6 M. & W., 624). The judge has power, under certain circumstances, to rescind his certificate (*Anderson* v. *Sherwin*, 7 C. & P. 527), but if he do so at all, it must be within a reasonable time (*Whalley* v. *Williamson*, 5 Bing. N. C. 200). The court may inquire if the judge had power to certify, and if it find he had power, will not interfere with the exercise of his discretion (*Cann* v. *Facey*, 4 A. & E. 68; *Richardson* v. *Barnes*, 4 Ex. 128).

The statute of Elizabeth, so far as it relates to costs in actions of trespass, or trespass on the case, is, in England, repealed by the 3 & 4 Vic. cap. 24, to which we shall hereafter refer; but it would seem even in England to be still unrepealed as to actions on promises (per Maule, J., in *Morrison* v. *Salmon*, 10 L. J. C. P. 92) and other personal actions of that kind (*Townsend* v. *Syms*, 2 C. & K. 381). In Upper Canada, however, the statute of Elizabeth has not been, in express terms, repealed (*Pedder* v. *Moore*, 1 U. C. Prac. 117).

In 1623, for the further prevention of vexatious suits, it was enacted by 21 Jac. I, cap. 16 sec. 6, that "In all actions upon the case for slanderous words, to be sued or prosecuted by any person or persons, in any of the courts of record at Westminster, or in any court whatsoever that hath power to hold plea of the same, after the end of this present session of Parliament, if the jury upon the trial of the issue in such action, or the jury that shall inquire of the damages, do find or assess the damages under forty shillings, then the plaintiff or plaintiffs in such action shall have and recover only so much costs as the damages so given or assessed amount unto, without any further increase of the same, any law, statute, custom or usage to the contrary in anywise notwithstanding."

This statute is confined to words spoken of the person (*Browne* v. *Gibbons*, 1 Salk. 206). It does not apply to slander of title (*Hale* v. *Warner*, 2 Tidd. Pr., 9th Edn. 997). It is confined to words actionable in themselves, or actionable only by reason of their being spoken of the plaintiff in his trade or business (*Surman* v. *Shellatto*, 3 Burr. 1688; *Collier* v. *Gaillard*, 2 H. Bla. 1062; *Burry* v. *Perry*, 2 Ld. Rayd. 1588; *Turner* v. *Horton*, Willes 438; *Grenfell* v *Pierson*, 1 Dowl. P. C. 406; *Goodhall* v. *Ensall*, 3 Dowl. P. C. 743). If special damages be laid and the words are not *per se* actionable, the statute is inapplicable (*Greaver* v. *Warner*, Hull 28; *Pedder* v. *Moore*, 1 U. C. Prac. R. 117) even though the declaration contain counts for words actionable *per se* (*Saville* v. *Jardine*, 2 H. Bl. 531; *Kelly* v. *Partington*, 5 B. & Ad. 645). But a plea of justification found for the plaintiff will not entitle him to full costs (*Halford* v. *Smith*, 4 East. 567).

The statute of James is not at all repealed or interfered with by the 3 & 4 Vic. cap. 24 (*Evans* v. *Rees*, 9 C. B., N. S., 391) nor by the act of Upper Canada Con. Stat. U. C. cap. 22 secs. 324, 325 which is a transcript of it (*Pedder* v. *Moore*, 1 U. C. Pra. R. 117) to both of which we shall hereafter refer.

In 1670, the Legislature of England, for the further prevention of frivolous and vexatious actions, passed the 22 & 23 Car. 2, cap. 9, which enacted, that "In all actions of trespass, assault and battery, and other personal actions, wherein the judge, at the trial of the cause, shall not find and certify, under his hand, upon the back of the record, that an assault and battery was sufficiently proved by the plaintiff against the defendant, or that the freehold or title of the land mentioned in the plaintiff's declaration was chiefly in question, the plaintiff in such action, in case the jury shall find the damages to be under the value of forty shillings, shall not recover or obtain more costs of suit than the damages so found shall amount unto; and if any more costs in any such action shall be awarded, the judgment shall be void, and the defendant is hereby acquitted of and from the same, and may have his action against the plaintiff for such vexatious suit, and recover his damages and costs of such suit, in any of the said courts of record."

What the Legislature must have meant by this act was, that in all actions of trespass, assault and battery, and other personal actions, where damages less than forty shillings shall be recovered, the plaintiff shall have no more costs than damages, unless the case be such that the judge can truly certify that a battery was proved, or that the freehold or title to land came chiefly in question. If, therefore, there be actions of trespass, or personal actions, in which it might occur that title came in question, or that a battery was proved, but yet the judge does not certify that the fact was so, the plaintiff is restrained in his costs. And if there be actions of trespass or personal actions in which, from the nature of things, title could not come into