damages above said; and this act shall hold place in all cases where the party is to recover damages." The words "costs of writ purchased," were construed to mean all legal costs of suit, (2 Inst. 288), and with this interpretation, the sentence which follows them was held to confer upon the plaintiff in any action whatever, provided he recovered damages no matter how small, a strict right to his full costs of suit, in addition to those damages.

This statute still constitutes the only foundation on which a plaintiff can have his right to costs. It does not, however, embrace every case in which a plaintiff gains his suit; for it has been determined in a somewhat narrow spirit, that where the plaintiff, as in the case of a common informer suing for a penalty, has no right of action vested in him previously to the action being brought, he does not "recover damages" within the meaning of the Statute of Gloucester, and therefore is not included within its provisions, (Pilfold's Case, 10 Rep., 116 a.; *Tyte* v. *Glode*, 7. T. R. 267, and the *College of Physicians* v. *Harrison*, 9 B. & C. 524).

Notwithstanding that relief was thus early given to a successful plaintiff, no measure of it was extended to a defendant until the reign of Henry VIII., when it was enacted (23 Hen. VIII., c. 15), that in certain specified actions only, after non-suit or a lawful verdict against the plaintiff, the defendant should have judgment to recover his taxed costs against the plaintiff. Much of the remaining inequality between the two parties was removed by the 4 Jac. I., c. 3, which gave costs to the defendant, successful by nonsuit or verdict, "*in all actions* whatsoever, wherein the plaintiff might have costs (if in case judgment should be given for him.") There still remained the disability to recover costs imposed by the peculiarity of the wording of 23 Hen. VIII., c. 15, upon defendants in actions brought by executors and administrators in their representative character. This was taken away by the 31st section of 3 & 4 Wm. IV., c. 42, subject to the power of the court or a judge to otherwise order. And finally, the 8 & 9 Wm. 3, c. 11, s. 1, enlarged by 3 & 4, Wm. 4, c. 42, s. 32, placed one of several defendants, who obtains a verdict, or against whom a *nolle prosequi* is entered, in the same position as if the verdict had been in favour of all defendants alike, reserving power to the judge at the trial to relieve the plaintiff from the costs of such defendant, by certifying upon the record that there was reasonable cause for making him a defendant in the action.

So far legislation was confined to dealing with the costs of litigating matters of fact. But either party might defeat the other on a point of law; either the plaintiff or defendant, conceding his opponents facts, might demur to the legal results sought to be deduced from them; and if he succeeded in maintaining his position on that ground, certainly he had as good a right to be reimbursed his costs of suit, as if he had gained his point by disproving allegation of facts. This was at last recognized by the legislature, and the 8 & 9 Wm. III, c. 11 (already referred to), developed by 3 & 4 Wm. IV., c. 42, s. 34, gave the costs of a demurrer to that party in the action in whose favour it was determined.

Thus at last by the united force of the several statutes which have been quoted, and which range in date from the reign of Edward I., to that of William IV. (a period of 555 years) is established, with a still imperfect generality, the right of the successful litigant to the costs, which his adversary has obliged him to incur; namely:—

The right of a PLAINTIFF, whenever he *recovers damages* (excepting he be an informer), and whenever he succeeds on *demurrer*.

The right of a SOLE DEFENDANT, whether one or several persons, whenever he obtains a *non-suit* or *verdict*, in those cases where a successful plaintiff would get costs, subject as against an executor or administrator to the power of the court or judge to otherwise order; and whenever he succeeds on demurrer.

The right of ONE OF SEVERAL DEFENDANTS (in case all do not succeed), whenever he obtains a *verdict* or a *nolle prosequi* is entered against him, subject to the power of the judge who tried the cause, to certify that he was properly made a defendant.

Might not the whole of this series of enactments be advantageously swept away, and a more complete and satisfactory result attained by one or two sections of a consolidating statute?

So much for the costs of the *cause*. The costs of the *issues* are regulated by an entirely different set of enactments.

It might be imagined, from the terms in which the earlier statutes are couched, that the dispute between the plaintiff and defendant, as it appeared in the pleadings, must necessarily be single-headed. And yet this was not strictly the case. A plaintiff could always embrace several counts in one declaration, although the defendant was restricted to one answer to each of them with the additional privilege of being able to divide into parts any count which admitted of being so treated, and then to plead separately to each part. Thus it frequently happened that, by the act either of the plaintiff or of the defendant, or of both, that a plurality of issues between them arose for determination in the same action. If all these resulted in favour of the same party, the state of things was practically the same as if there had been only a single issue, and no difficulty on this account presented itself in the application of the foregoing statutes relative to costs. But it was quite otherwise when some of the issues were found for the plaintiff, and the remainder for the defendant. In the end, the Courts of Queen's Bench and Common Pleas appear to have decided (*Bridges* v. *Raymond*, 2, W. Bl., 800, and *Postan* v. *Stanway*, 5, East 261), that if the plaintiff succeeded on any *one* of the issues thus raised which circumstance gave him a verdict in a distinct cause of action, he was entitled to the costs of the whole cause including in the Common Pleas the costs of the count on which the defendant succeeded, without any deduction on account of those issues on which he had failed, and that the defendant had no right to any costs unless he defeated the plaintiff on all the issues. In the Exchequer, on the contrary, the practice (for there are no reported decisions on the point) showed a more liberal spirit of interpretation; and when the judges, under the powers given them by the 11, Geo. IV., and 1, Wm. IV., c. 70, sec. 11, made the new rules for securing uniformity of practice in the superior courts, they adopted the practice of the Court of Exchequer in this respect declaring that "no costs shall be allowed in taxation to a plaintiff upon any counts or issues upon which he has not succeeded: and the costs of all issues found for the defendant shall be deducted from the plaintiff's costs," (Reg. Gen. H. T. 2, Wm. IV., r. 74.)

A *nolle prosequi* entered upon any counts or any part of a declaration, was put on the same footing as a verdict for the defendant, by 33 sec. of 3 & 4, Wm. IV., c. 42.

The disability under which a defendant laboured of not being able to plead more than one defence to the same cause of action, was for the first time removed by the 4 sec. of 4 Anne, c. 16, which empowered the defendant in any action, with the leave of the court in which it was brought, to plead as many several matters thereto as he should think necessary for his defence. But in order that this multiplication of issues might not be made the means of vexing a defeated plaintiff with unnecessary expenses, the 5th section of the same act gave him the costs of such of these double issues as he was fortunate enough to win at the assessment of the court, except in the case of a verdict on an issue of fact, when the judge who tried it certified that the defendant had reasonable cause for raising it. What result this construction of the statute (arrived at in *Richmond* v. *Johnson*, 7, East 583) produces in practice is not always ascertainable. *Callender* v. *Howard*, 10, C. B. 302, is one of the last reported cases upon the point