is injured by such animal. And in an action for an injury alleged to be done by a ferocious dog of the defendant, known by him to be of that character, it was held, as most of our readers know, that the plea of "not guilty" put the *scienter* in issue, as well as the *character* of the dog.

Now, without gainsaying the fact that there is a large amount of money invested in sheep, and that a sheep is a very useful and valuable animal, and withal a very gentle creature, we must think that the Legislature, in its anxious care to protect sheep and lambs against ferocious dogs, has lost sight of protection for women and children, to say nothing of men, who might be supposed to be able to protect themselves.

ENGLISH BENCH AND BAR.

Mr. Sergeant Pigott has been appointed a Baron of the Court of Exchequer.

Sir Roundell Palmer, Q.C., has been appointed Attorney-General, in the room of Sir Wm. Atherton, Q.C., resigned, owing to ill health.

The *new Solicitor-General is R. P. Collier, Q.C. His* appointment is well received by the profession.

SELECTIONS.

THE COSTS OF ACTIONS IN THE SUPERIOR COURTS OF COMMON LAW *

Probably no subject with which a lawyer is professionally brought in contact, is so unattractive and even distasteful to him as that of costs. Still its importance is perceived almost without an effort of thought. The expense of bringing and sustaining an action for the vindication of a personal right may be so great, or so capricious in reference to its incidents, as to make recourse to the established tribunals too perilous for the ordinary citizen, and thus, with the highest intelligence and integrity on the Bench, it would happen that the administration of justice between man and man would practically be effected, if at all by extremely rude expedients. Of course this supposition is extreme and beyond all chance of relization, at least in this country, but it serves to point out the kind of impediment which an ill-adjusted system of imposing costs throws in the way of the efficiency of otherwise perfect judicial courts.

Persons unacquainted with the details of legal practice naturally enough imagine that there can be no difficulty in the matter. A. has a claim against his neighbour B, to enforce which he is obliged to seek the aid of a Court of Law. He succeeds in his suit: as a matter of course, in addition to the claim which he has thus established against B, he ought to receive from him reimbursement of the expenses to which he has been driven for the purpose of vindicating his right. Or on the other hand, he fails; it is equally plain that he ought in this case to pay B. the money which resistance to an unfounded claim has entailed upon him.

This theory is, however, little accordant with the facts of practice. Under hardly any circumstances does the award of costs refund to the successful party the whole of the money, which he has been forced to expend in the prosecution of his suit, and not seldom is it that he even fails to obtain this award. How far it may be possible or expedient to give the suitor complete relief in this respect is a grave question not readily to be answered, but it may be safely asserted, that the rules affecting costs in our common law courts are in a most unsatisfactory state of intricacy, and that any principle which may lie at the root of them, is almost concealed from the explorer amid the entanglement due to the combined operation of discordant Acts of Parliament.

A single example will illustrate the condition of our law of costs:—

An action for slander was tried at the Summer Assizes of 1861, wherein the jury found a verdict for the plaintiff, damages 1s.; it subsequently became a question for the decision of the Court of Common Pleas, whether or not the plaintiff was, under these circumstances, entitled to his full costs. The Court adjudged only 1s., and Erle, C. J., gave the reasons for this judgment in the following words:—"I think that the 3 & 4 Vic., c. 24 does not conflict with the statute of James, so as virtually to repeal it, but that both statutes may stand together." [His lordship read the 2nd section of 3 & 4 Vic., c. 24.] "I give that section its full application. The plaintiff in an action for slander has recovered less than 40s.; he is, therefore, to have no costs unless the judge certifies. The judge has certified, and the question is as to the effect of his certificate. I am of the opinion that the effect of it is to take the case out of the previous enacting part of the section, and the plaintiff then has the same right to costs as he would have had supposing the 3 & 4 Vic., cap. 24 had never passed. Then, by the Statute of Gloucester, he would have been entitled to his full costs unless that right was qualified by any subsequent right. His right is qualified by the statute of James, which says that in an action for slanderous words, where the damages are under 40s., the plaintiff shall recover only so much costs as damages (*Evans* v. *Rees*, 30, L. J. C. P. 16, L. O. 9, C. B. n s. 391).

Thus, after hearing a most learned and solemn argument, four of the ablest judges in Westminster Hall felt themselves obliged to take the case out of the operation of a Statute of Queen Victoria, which forbade costs, then to remit it to that of a Statute of Edward I., which gave FULL costs, and finally to put it under a statute of James I., which had the effect of giving the fortunate plantiff one shilling costs! Where can be found any satire upon our system of legal procedure more severe than that which is afforded by this matter of fact piece of burlesque? Surely the time has come for the well considered interposition of the legislature; and as all the law on the subject is the creature of statute, a very legitimate field for consolidation and amendment lies open to the reformer.

It is not difficult to give a tolerably consise, yet comprehensive history of the various enactments, which are at present in force.

Previously to the reign of Edward I. costs of suit were not it seems, given *totidem verbis* to the successful party. Lord Coke (2 Inst. 288) remarks, "by this it may be collected that justice was good and cheap in ancient times." However his lordship's inference is not inevitable, for there is little doubt (Reeve's Hist. Eng. Law, 400) but that it was then the practice for juries to form an estimate of the costs, and to include the sum so arrived at, in the amount of damages awarded by them; moreover, if this estimated sum ultimately proved insufficient to cover the actual costs, the courts used to award *increased costs*. Still wherever, as in real actions, the verdict of the jury did not take the form of damages, no costs could be recovered.

To put things on a more satisfactory footing, the 6 Edw. I., c. 1, commonly known as the Statute of Gloucester, was passed. The first section of this Act gave damages in certain real actions to which they had not before been incident; and the 2nd section provided, "that the demandant may recover against the tenant the costs of his writ purchased together with the

* A Paper by Mr. J. B. Phear, read at a General Meeting of the Society, June 8th, 1863, and ordered to be printed.