At length the Legislature in 1278 passed the statute of Gloucester, (6 Ed. I,) enacting that in certain actions a plaintiff should recover damages, and that wherever he recovered damages he should have the costs of the writ purchased, &c. Subsequent statutes were passed giving plaintiffs costs in other actions named, the cumulative effect of which is to give to plaintiffs costs in almost all actions. If the plaintiff failed in his suit he was amerced to the King *pro falso clamore*, but the *defendant*, so far, was entirely without remedy for the recovery of his costs. He like the plaintiff *before the passing* of the Statute of Gloucester, paid his attorney win or lose, and the payment was a matter between himself and his attorney, of which the Courts did not take notice.

In 1531, by the statute 23 Hen. VIII., cap. 15, sec. 1. costs were given to defendants in certain actions few in number, and so the law continued until 1606, when the statute 4 Jac I., cap. 3, sec. 2 was passed, enacting that "costs are to be allowed to defendants in all actions whatever, in which the plaintiff if he recovered would be entitled to costs, and this either after nonsuit or verdict."

Costs therefore are dependent more or less directly or indirectly, on the statute of Gloucester, which was passed in 1278, seven years *before* the passing of the statute of Westminster the Second, which authorized the appointment of attorneys in suits at law. And these costs though at first only to cover the expense of the writ, in course of time by the ruling of the Courts and otherwise, were extended to whatever *expenses* the party was put to in the prosecution or defence of his suit. The law assumed that litigants continued as before to pay their attorneys, and its object was to reimburse to the parties all moneys so by them *expended*. Every old form of postea establishes this fact; for the award is almost invariably thus: "Therefore it is considered that the plaintiff do recover against the defendant his said debt, &c, and also £ for *his* costs and charges by him about his suit in this behalf *expended*, &c." Such too was in substance the award of costs to defendants when they succeeded.

Bearing these facts in mind, little difficulty will be experienced in accounting for the current of decisions as to costs and of pronouncing when a decision is correct or otherwise.

An attorney who neglects to take out his certificate, or as he is commonly called "an uncertificated attorney," is not entitled to practise, and so is not entitled to charge his client whether plaintiff or defendant any costs. (*Humphreys* v. *Harvey*, 1 Bing. N.C., 62). But if the client has in fact advanced or expended costs he is entitled if he succeeds, whether his attorney is certificated or not, to recover costs. (*Reeder* v. *Bloom* 3 Bing. 9; —— v. *Sexton*, 1 Dowl. P. C., 80.) On the contrary, if he has not paid his attorney anything and is not *liable* to pay him anything, he has no right to recover costs from his opponent. (*Young* v. *Dowlman*, 3 Y. & J., 24.)

Upon the same principle it has been decided, that a pauper who is by statute (11 Hen. VII., cap 12), relieved from all liability to pay costs, is not entitled to recover costs. (*Dooly* v. *The Great Northern Railway Company*, 4 El. & B., 341.) A judgment awarding costs to him by him *expended* when he expended none, would be false in fact and contrary to law. And it would seem that as to this class of cases whether the pauper though not liable to costs, does in fact advance money, he is not entitled to recover from his opponent money so advanced. (*Dooly* v. *The Great Northern Railway Company*, *ubi sup.*) This ruling, it must be confessed, does not appear to square with the doctrine laid down in *Reeder* v. *Bloom*, as to moneys paid to uncertificated attorneys. If money paid to an attorney who has no right to receive is recoverable, there appears to be no reason why money disbursed by a person who is not bound to disburse should not be equally recoverable; there is certainly a distinction, but one which does not justify the difference in practice. The principle test however, that costs are awarded *only* when costs are expended remains untouched.

This was the state of the law when *Jarvis* v. *The Great Western Railway Company*, reported at length in other columns was decided. In that case it appeared that the Great Western Railway Company employ a solicitor to whom they pay an annual salary. It is his duty in consideration of the salary, to prosecute and defend all suits brought for or against the Company, without additional cost to them. He is entitled to ask them for money disbursed, but has no claim upon them for ordinary costs or fees for services performed. This being the case, the Company is sued and succeeds in the suit. Judgment is entered up and the attorney of the Company endeavors to enforce by means of the judgment, payment of ordinary costs including disbursements. The Court of Common Pleas have said to him, you cannot do this: 1. Because the costs are not yours, but your clients: 2. Your clients are not entitled to recover more than what they have expended. 3. Therefore under your judgment you are entitled to disbursements and nothing more.

This reasoning appears to us to be unanswerable. If the first and second propositions be granted, the conclusion must follow. And we think in view of the state of law as above explained by us, they must be granted. It may not be literally true that the Great Western Railway Company do not in any suit expend more than disbursements. The salary which they pay their attorney is a