

But the Statute extends only to plaintiffs in civil action, *R. v. Wright*, 2 Str. 1041, and an action for penalties is not within it, *Hewes v. Johnson*, 1 Y. & J. 10. A defendant in a civil action, however extreme his poverty, is **264** not entitled it is said to *defend *in forma pauperis*; the Acts do not include him, though in *Wiat v. Farthing*, 2 Keb. 378, the Court moderated the costs; and it is at least such a singular favour to admit him that on his pleading a dilatory plea he will be dispaupered, *Anon.* 11 Mod. 84. But the rule is different in Chancery, 1 *Daniell's Chanc'y Pr.* 34. In England defendants are allowed to defend in this way in suits for offences against the customs and excises, as also where they are in contempt, but these privileges are given by statutes, which do not extend here. In indictments it is said that a defendant may defend at common law *in forma pauperis*, for the prosecutor being entitled to no costs will not be prejudiced, *R. v. Wright supra*, an indictment for a conspiracy where the precedents were searched and found *acc.*

A party, it seems, may be admitted to sue *in forma pauperis* at any time during the progress of the suit, but if the defendant succeed in the action, the plaintiff must pay costs up to the time of his admission, *Brunt v. Wardle supra*, overruling *Lovewell v. Curtis*, 5 M. & W. 158, and *Foss v. Racine*, 4 M. & W. 610; *Doe v. Owens*, 10 M. & W. 514; and in England he may be made, it seems, to pay costs on amending any of his pleadings that have been demurred to, *Foster v. Bank of England*, 2 Dowl. & L. 790. A pauper, however, may in general recover costs though he pay none, interlocutory or final, *Rice v. Brown*, 1 B. & P. 39; *Pratt v. Delarue*, 10 M. & W. 509, which though full costs, *Goughenheim v. Lane*, 1 M. & W. 136, are, it is said, by the proper construction of the Statute, such only as he has paid or is liable to pay, and hence ought not to include attorney's fees or counsel fees, for by the Statute he is not liable to pay any such fees, *Dooly v. Great North R'way Co.* 4 E. & B. 341; but the practice where the plaintiff recovered more than 5*l.* was otherwise, until a rule was made in 16 Vict. discontinuing the practice. With us counsel fees are never taxed in the costs, and the attorney's taxed fee is only five dollars.

Stat. 23 H. 8, c. 15, s. 2, extends to actions of assumpsit, *Casey v. Tomlin*, 7 M. & W. 189. Formerly, it is said, if a pauper plaintiff were nonsuited, or had a verdict against him, he had his election to pay the taxed costs or to be whipped, *Mounford v. Pate*, 1 Keb. 913, and this, the Court observed, was the continued practice; but in *Anon.* 2 Salk. 506, on motion that a pauper should be whipped for non-payment of costs upon a non-suit, Lord Holt denied it, saying he had no officer for the purpose and never knew it done, and the practice has since been, where a pauper plaintiff acts vexatiously or improperly, to dispauper him, *Tidd Prac. supra*, which according to Lord Holt, ought to be done where it turns out that the party has an estate in possession, though he swear he was in debt more than it was worth, but *Turton and Gould Justices contra*, *Anon.* 2 Salk. 507.

These Statutes do not extend to proceedings in Chancery, as to which see *Daniell's Chancery Pr.* 34 *et seq.*