liable for costs. In Tattersall v. Groote, 2 B. & P. 253, Lord Eldon observed that the doctrine seemed to be founded on this Act of which all the cases are an exposition. "Attending to the language of the Act, perhaps we may be authorized to say that the sound principle, on which the exemption of executors and administrators rests, is not the degree of ignorance under which they may be supposed to lie, but that the exemption founds itself on the description of the words contained in the Statute on which costs are to be paid; which are any action, &c. upon any especialty made to the plaintiff or plaintiffs, or upon any contract supposed to be made between the plaintiff, &c." The Statute of 4 Jac. 1, does not carry the matter further; the subsequent allusion is to any offence or wrong personal immediately supposed, &c. See Jobson v. Forster, 1 B. & Ad. 6; Dowbiggin v. Harrison, 9 B. & C. 666. And it has been ruled that general Statutes giving costs to defendants do not apply to suits brought by executors, &c., Martin v. Norfolk, 1 H. Black. 258. But now by the Code, Art. 93, sec. 105,[1] 1798, ch. 101, sub-ch. 8, sec. 5, it is provided that executors and administrators, in all personal actions which they are entitled to bring, shall be entitled to and answerable for costs in the same manner as the deceased would have been, and shall be allowed the same in their accounts, if the Court awarding costs against them shall certify that there were probable grounds for instituting, prosecuting or defending the action, in which a judgment or decree shall have been given against them, and see Art. 93, sec 37.[2] In construction of this Act it was observed by the Court of Appeals in Ferguson v. Cappeau, 6 H. & J. 394, that in England costs are sometimes given against an executor or administrator plaintiff in his individual capacity, &c. But where he is obliged to sue in his representative character, the judgment for costs is never *de bonis testatoris*, and the Act of 1798 makes no difference in the form of judgment against a plaintiff, executor, &c., but he is to be answerable for costs in the same manner as the deceased would have been, that is, in his individual character. That Act does not give a judgment for costs *de bonis testatoris*, in case of a plaintiff, executor, &c., but leaves the judgment to be entered *de bonis propriis*, as it is in England where *plaintiff, executor, &c., is liable **290** for costs, but goes further than the practice in England and gives costs to defendants in every case, by extending that judgment *de bonis propriis* for costs against executors and administrators to all cases in which they are plaintiffs. This construction is sustained by that clause of the same section which provides that executors, &c., shall be allowed in their accounts for the costs, &c. which would be wholly nugatory if the judgment was to be *de bonis testatoris* . . . . When costs awarded against an executor, &c. are allowed by the Orphans Court on the certificate of the Court in which the suit is tried, he becomes legally entitled to retain them out of the assets in his hands, and is not answerable for them on his bond; and if they are not allowed, they cannot be levied *de bonis testatoris*.

[1] Code 1911, Art. 93, sec. 104; Bowie v. Ghiselin, 30 Md. 553; Dalrymple v. Gamble, 68 Md. 164.

[2] Code 1911, Art. 93, sec. 36.