

curred by the defendant or person grieved by the judgment, both in the superior and¹⁸ inferior courts. There had been no such allowance of costs upon reversal before this time.¹⁹ Sir John Hol-lams, whose judgment and advice were much relied upon in the reorganization of the English courts during the latter half of the nineteenth century, says in his "Jottings of an Old Solicitor", (page 65),

In the present day it is impossible to give any reasonable estimate as to the time within which the litigation must end, or as to the expense which it may involve. Almost every decision is subject to the risk of appeal to the Court of Appeal, and from that Court to the House of Lords, and those successive appeals may conceivably happen more than once in the same case. The practical mischief from this unrestricted right of appeal arises from the modern system introduced by the Courts, without express legislative authority, of allowing the successful appellant the cost of the appeal and of the decision appealed from. Formerly this was unheard of, and consequently even when there was power to appeal it was not exercised, for the unsuccessful litigant knew that even if the appeal should be successful he would have to pay his own costs, and if it was unsuccessful, the costs of his opponent also. Now, what the Times, some time back, aptly described as the "gambling element," has been introduced into litigation, the stake constantly increases with successive appeals, and encouragement is given by one final effort to throw the whole costs on the hitherto successful party. In many cases this has been the result, and many suitors in actions involving questions open to different views, have had reason greatly to regret that in the first, and it may be also in the second Court they were successful.

In 1791, a committee of the state Senate²⁰ recommended that part of the burden of costs be put

18. The original reads "or."

19. Sayer, *Law of Costs*, London 1777, 208. Tidd, *Law of Costs in Civil Actions*, Dublin, 1793, 50.

20. *Votes and Proceedings Senate*, 1791, 93.