At the close of the plaintiff's case the defendant's counsel moved for a nonsuit on the ground, among others, that the County Court had no jurisdiction to try a *qui tam* action under the above statute.

The learned judge overruled the objection, and the jury found a verdict in favour of the plaintiff for the amount claimed.

Against this verdict the defendant moved in the following term, on the same ground as that taken at the trial, and the learned judge, feeling himself bound by the decision of *O'Reilly qui tam* v. *Allan*, though in fact dissenting from it, made absolute the rule *nisi* to enter a nonsuit.

From this judgment the plaintiff appealed.

Robert A. Harrison, for the appeal, cited *Lawford* v *Partridge*, 1 H. & N. 621; *Powley* v. *Whitehead*, 16 U. C. Q. B. 589; *Campbell* v. *Davidson*, 19 U. C. Q. B. 222; Con. Stats. U. C. ch. 124, sec 2; ch. 15, sec. 1; Con. Stats. C. ch. 5, sec. 6. sub sec. 17; *O'Reilly q. t.* v. *Allan*, 11 U C Q B. 411; *Haight* v. *McInnis*, 11 U. C. C. P. 518.

John Patterson, contra, referred to Espinasse on Penal Actions, and Con. Stats. U. C. ch. 15, sec. 16, sub-sec. 5.

Richards, C. J., delivered the judgment of the Court

Since the decision of the case of *O'Reilly qui tam* v. *Allan*, 11 U. C. Q. B. 411, the statute for recovering penalties similar to those which this action was brought to recover has been somewhat changed in the consolidation, and in looking at the change and considering it in connection with that case, and the case of *Medcalfe* v. *Widdefield*, 12 U. C. C. P. 411, we think we may properly hold that County Courts have jurisdiction in Upper Canada to try actions for penalties under the Con. Stats. (22 Vic. ch. 124.)

The statute 4 & 5 Vic. ch. 12, sec. 2, after declaring that under certain circumstances justices shall forfeit and pay the sum of twenty pounds, together with full costs of suit, proceeds as follows, "to be recovered by any person or persons, who sue for the same by *bill, plaint* or *information*, in any Court of Record in Canada West."

The portion of the Consolidated Act referring to the same proceeding reads thus: "To be recovered by any person, who sues for the same, by action of debt or information, in any Court of Record in Upper Canada.

Under section 81 of the Law regulating Elections for Members of Parliament (Con. Stats. C. ch. 6) a penalty of $100 is imposed upon the keeper of a public-house who neglects to close it as required by that section; and section 87 of the same statute enacts that all "penalties imposed by this act shall be recoverable with full costs of suit by any person, who will sue for the same, by action of *debt* or *information* in any of Her Majesty's courts in this Province having competent jurisdiction.

At the time *O'Reilly qui tam* v. *Allen* was decided, the jurisdiction of the County Court, was not precisely as it is now. Then the jurisdiction was confined to debt, covenant or contract, to the amount of £50, and to debt or contract, when the amount was ascertained by the signature of the defendant, to £100; and also in all matters of tort relating to personal chattels, where the damage should not exceed £30, and where the title to land should not be brought in question.

Under the County Court Act now in force, subject to certain exceptions, (such as actions when the title to land is brought in question, or in which the validity of any demise, bequest, &c., under any will or settlement is disputed, or for libel or slander, or for criminal conversation or seduction, or an action against a Justice of the Peace for anything done by him in the execution of his office, if he objects thereto), the County Courts have jurisdiction in all personal actions where the debt or damages claimed does not exceed the sum of $200; in all causes or suits relating to debt, covenant and contract, to $400, when the amount is liquidated or ascertained by the act of the parties, or by the signature of the defendant; with certain provisions relating to bail-bonds and recognizances of bail, &c.; and in all cases unprovided for, the general practice and proceedings in those courts is to be the same as in the Superior Courts of Common Law.

The Interpretation Act (Con. Stats. C. ch. 5, sec. 6, sub-sec. 7) provides, that when no other jurisdiction is given or furnished for the recovery of pecuniary penalties, they shall "be recoverable, without costs, &c., before any court having jurisdiction to the amount of the penalty in cases of simple contract."

The authorities referred to in the case of *O'Reilly qui tam* v. *Allan* seems to sustain the conclusion arrived at by the court. The learned chief justice, in concluding his judgment, makes special reference to the proceedings mentioned in the *then* County Court Act, being by "bill, plaint or information," none of which were the ordinary and appropriate methods of proceeding in the County Court.

The case of the *Apothecaries Company* v. *Burt*, 5 Ex. 363, was not referred to in that judgment. That was an action to recover a penalty of £20, and under the statute all penalties and forfeitures exceeding £5 could be recovered in any of His Majesty's Courts of Record in England and Wales. The action was brought in the County Court, which was authorised to hold "all pleas of personal actions when the damage claimed was not more than £20, whether on balance of account or otherwise." The Court or Exchequer refused a prohibition. The ground of want of jurisdiction to try it as a personal action was not raised, the ground on which the prohibition was sought being, that the action was brought in such a form that four penalties of £20 each might be claimed.

Looking at the change in the language of the Consolidated Statute (22 Vic. ch. 124) from that used in 4 & 5 Vic. ch. 12, the proceeding now being by action of "*debt* or information in any Court of Record in Upper Canada," instead of by "*bill*, plaint or information," as the former act stood; and looking at the changes in the jurisdiction of the County Court, as well as the decision of this court, in *Medcalfe* v. *Widdefield*, sustained by the case in 5 Ex., we ought, in my judgment, to hold that this action was well brought in the County Court. In doing this we do not necessarily overrule the case of *O'Reilly qui tam* v. *Allan*, there having been some, as to this