ponding sections directed to this object, is to be extended from the comparatively narrow circle of keepers of such houses to the general body of the public, it is simply because in the part of the section relating to the penalty there is no definition of the persons who are rendered liable. I entertain little doubt that the draftsmen who penned the 66th section thought that in substituting the words, "under a penalty of $100 in every such case," for the definite language of the 81st section, he was expressing the same thing in a more concise form. It may be that in aiming at a little originality by this consideration, he has fallen into obscurity; but such things have been known to occur in Acts prepared by skilful and experienced hands.

Regarding the 66th section as it stands, it is necessary to supply by construction the designation of persons whose duty it is to close the houses. The reasonable construction is that these persons are the keepers of the houses. If the words "by the keeper of such house" must be introduced into the first clause of the section it appears to me that they should equally be introduced into the second clause. For my own part, I prefer that construction to one that virtually seeks to introduce into the same clause the words, "by any person." The inconveniences of such a construction, some of which have been graphically described by the learned Judge below, are in themselves sufficient to induce the Court to pause before adopting it.

I do not repeat the other constructions which have been presented by my brothers Burton and Patterson, in confirmation of this view, but content myself with saying that if this be the correct view to take of the section, it follows that it is only violated by the giving of liquor, when the giver is a keeper of one of the houses directed to be closed; and that no agent of the candidate will, by giving liquor to any person within the prohibited hours, be guilty of a corrupt practice avoiding the election, unless he is the keeper of such a house.

I only desire to add that I entirely concur in the remarks of my brother Patterson upon Clarke's case. If his treating Jordan at Whitby, where Jordan was entitled to vote and did vote, would have avoided the election, that would have been the result of the treat he actually gave him at Oshawa. The offence does not depend upon the character of the person treated. It does not matter whether he is or is not entitled to vote at any particular place, or whether he is entitled to vote at all.

In my opinion the appeal should be dismissed with costs.

Appeal dismissed with costs.

COMMON LAW CHAMBERS.

Pettit v. Mills.

Civil right to recover expenses incurred in criminal prosecution—Pleading.

(February 10th, 1876—Mr. Dalton.)

The defendant was found guilty of robbery of a large sum of money from the plaintiff's house, who thereupon brought this action to recover the money so taken, as well as the expenses attending the criminal prosecution, and damages for the trespass. The second count of the declaration was for trespass, and the third set out the facts of the robbery, adding that the defendant had been arrested on the information of the plaintiff, and afterwards tried and convicted, that the plaintiff had expended large sums of money in so bringing the defendant to justice, whereby the latter became liable to the former in the sums so expended.

A summons was obtained to strike out either the second or third count, or for leave to plead and demur to the third count, on the ground that both counts were in trespass, that the third was a count in tort as well as assumpsit, and that expenses incurred under such circumstances were not recoverable.

Muir shewed cause, and contended that as the civil right was suspended until the criminal was brought to justice, the plaintiff necessarily had to expend the moneys he now sought to recover before he could bring the present action, and it would be for a jury to determine the amount: *Reid* v. *Kennedy*, 21 Grant, 86; *Chowne* v. *Baylis*, 31 Bea., 351, 359.

Davidson contra.

Mr. Dalton.—The count may be a good count in trespass, but not in assumpsit, and either the second or third count must be struck out. It is very doubtful whether the plaintiff can recover his expenses and outlay in this action.

The head note to *Blackman* v. *Bainton* 15 C. B. N. S. 432, is quaint: "Twenty five witnesses and a horse on one side against ten witnesses on the other. *Held* not such a preponderance of 'inconvenience' as to induce the Court to bring back the venue from the place where the cause of action (if any) arose."