

RECENT ENGLISH DECISIONS.

that we know of, in fact the occasion for such a process did not arise, unless, indeed, it occurred to his Lordship by reason of his suggestion not being accepted, which, under the circumstances, was impossible.

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The August numbers of the Law Reports comprise 8 App. Cas. pp. 337-576, 11 Q. B. D. pp. 145-313, 8 P. D. pp. 129-150, and 22 Ch. D. 577.

STATUTORY PENALTY—CROWN AND COMMON INFORMER.

In the last article on Recent English Decisions in this journal reference was made to the case of *Clarke v. Newdigate*, and now the first case to be noticed in the above number of Appeal cases is the case of *Bradlaugh v. Clarke*. It does not, however, seem necessary to dwell here upon the question therein decided, of the construction of the particular statute under which the action was brought, or to do more than allude to the somewhat different view which Lord Selborne and Lord Blackburn appear to take as to the principles on which statutes, which expressly repeal former statutes *in eadem materia*, are to be interpreted. It may, however, be stated that the House of Lords affirms what in the Court of Appeal had been acknowledged as an incontestable proposition of law, viz., that "where a penalty is created by statute, and nothing is said as to who may recover it, and it is not created for the benefit of a party grieved, and the offence is not against an individual, it belongs to the Crown, and the Crown alone can maintain a suit for it." This, Lord Selbourne says, p. 358, rests on a very plain and clear principle: "No man can sue for that in which he has no interest; and a common informer can have no interest in a penalty of this nature unless it is expressly, or by some sufficient implication, given to him by statute. The Crown, and the Crown alone, is charged generally with the execution and

enforcement of penal laws enacted by public statutes for the public good, and is interested, *jure publico*, in all penalties imposed by such statutes; and therefore may sue for them in due course of law, where no provision is made to the contrary. The *onus* is upon a common informer to show that the statute has conferred upon him a right of action to recover the particular penalty which he claims."

CONSTRUCTION OF STATUTES—GENERAL INTENTION.

Attention may also be called to an interesting *dictum* of Lord Blackburn's as to the construction of statutes, at p. 373, to the effect that, "in modern times much more weight has been given to the natural meaning of the words than was done in the time of Elizabeth; and in some cases in which the old judges have given effect to the general intention as over-ruling the particular words, a modern court would have given effect to the particular words as showing that the intention really went further than what was supposed."

HUSBAND AND WIFE—DISABILITIES OF MARRIED WOMEN.

In the case of *Cahill v. Cahill*, p. 420, which is the next requiring special notice, Lord Selborne delivers a very learned judgment on the subject of married woman's disabilities. He repudiates, as does also Lord Blackburn, p. 438, the notion that the common law of England, as to the disabilities of married women was founded on any presumption against the spontaneity or freedom of acts done by the wife when under marital control, or that it was subject to exception whenever there might be circumstances sufficient to repel such a presumption. "The principle of the disability of coverture," he says, "was that stated by Littleton, (sect. 168): 'a man and his wife are but one person in the law,' which is the reason why 'a man cannot grant or give his tenements to his wife during the coverture;' and (as Lord Coke says, in his comment on the same place), 'she is disabled to contract with any without the consent of her husband: *omnia que sunt uxoris sunt ipsius viri.*'" But Lord Selborne goes on to point