

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. Allen* 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. Widdifield*, 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. Allen*, there having been some, as to this point, not unimportant changes made in the words of the statute by the consolidation of it.

I think we may infer that this change was intentionally made; the giving the action of debt by express words, when the proceeding in debt was one which could be readily taken in the County Court, whilst the proceeding by bill or plaint that had previously existed was not one which was at all appropriate to that court. This would, also, harmonise with the provisions of the Consolidated Statute of Canada, authorising certain suits for pecuniary penalties to be recovered "in any court having jurisdiction to the amount of the penalty in cases of simple contract."

It certainly would seem absurd to maintain the distinction contended for in proceeding to recover penalties under this particular statute, when other penalties of a much greater amount could be sued for in the County Court, and (in determining the latter) points of quite as much difficulty would arise as in disposing of the question likely to occur under this statute.

The County Courts have now such extended jurisdiction, compared with what they formerly possessed, that I do not think it unreasonable that the legislature, when the statutes were consolidated, should consider that they might safely be entrusted with the disposal of this kind of penal action, when \$80 was the sum involved, and that the change made in the law at that time was with a view of putting the matter beyond reasonable doubt, and establishing something like a uniform rule in relation to these actions.

The only point argued before us on this appeal was whether the County Court had jurisdiction, and as we are in favour of the plaintiff on that ground we shall allow the appeal without costs, and direct that the rule *nisi* to enter a nonsuit in the court below be discharged.

Appeal allowed.

## ENGLISH REPORTS.

### MASTER OF THE ROLLS.

A — v. B —.

Letters written during engagement to marry—Threat to publish—Injunction.

[14 W. R. M. R., April 25]

This was a motion to restrain the publication of letters written by the plaintiff, a young lady under age, to a gentleman, during the period in which such lady and and gentleman were affianced to one another.