civil damages In this case no court can assume that had Stephen Patterson been arrested he would ever have been tried, or, if tried, convicted, or, if convicted, that the fines would ever have been collected by the commonwealth. But still, for every wrong there is a remedy; therefore, the imputed breach of the bond must be actionable upon common-law principles, and the damages must be assessed by the best tests the facts of the case may afford.

Confirmatory and, as we think, also declaratory of the common-law—the sixth section of article 8, chapter 83, of Stanton's Rev. Stat., p. 259, provides that "clerks of courts, sheriffs, and other public officers, and their sureties, and the heirs, distributees, devisees, and personal representatives of each, may be proceeded against by suit or motion, jointly or severally, for their liabilities or defalcations by the commonwealth in her own right.

The application of this enactment cannot be restricted by the context of the article in which it is found and which is too contracted for its useful or consistent operation. But it is, in its range, coextensive with the chapter on revenue, and applies to every case affecting the revenue of the commonwealth, as this case certainly may affect it by possible diminution. One of the principal objects seems to have been to hold the sureties to liability. On these grounds we are of the opinion that the action, as brought, is maintainable, and that, consequently, the Circuit Court erred in sustaining the demurrer to the petition.

Wherefore, the judgment is reversed and the cause remanded for further proceedings consistent with this opinion.

The importance and novelty of the foregoing decision seem to bring it fully within the range of our publication. We cannot say, that we should have been inclined, *à priori*, to have adopted the same view of the law, and still we are far from feeling any decided repugnance to the decision It seems to us, that the statute of the state referred to in the opinion may be regarded as favoring the view taken by the court It is true the court also intimates that the view is sustained by principle, as well as by the common and statutory law of Kentucky

We feel very confident that the common law of England countenances no such remedy in favor of the government, in cases of a criminal or penal nature, where the default complained of is in not detaining the accused party, when arrested, and where the proceeding is, in form, criminal. The only remedy which could there be resorted to in cases of that character would be by attachment for a contempt of the court before whom the process is made returnable The English authorities are digested in 15 Petersdorff's Ab. 615 It seems that at common law the remedy by attachment was the only one allowed. Remedies by action in favor of private parties seem to be exclusively of statutory origin in England But some of the later English statutes have given an action against the party by a common informer suing *qui tam*: 4 Geo 3, c 13, s 4; *Sturmy* v. *Smith*, 11 East 25. And there seems to be no question the sheriff is amenable for the act of his officers, though the offence be indictable: *Woodgate* v. *Knatchbull*, 2 T. R. 148

And we see no objection in point of principle or precedent, to allowing an action in favor of the state upon all actions which sound in damages merely, and where the object is to recover a pecuniary mulct or penalty Thus, in actions to enforce recognisances in criminal cases, or in penal actions, there would be no such uncertainty as would be likely to embarrass the courts or juries It has been often held that the liability of a sheriff is in the nature of a tort, and that assumpsit will not lie: *Wallbridge* v. *Griswold*, 1 D Chip. (Vt.) 162. So also of a collector of taxes: *Charlestown* v. *Stacy*, 10 Vt R 562. But beyond this it seems to us the sheriff is so much a part of the government, being the head of the police force of the county and of the *posse comitatus*, that there would be an incongruity in quickening his pulses in favor of duty by an action on the case for any tortious act or neglect. The remedy of public opinion and in extreme cases, where there is reason to presume bad faith and criminal connivance, by attachment and imprisonment, in the discretion of the court, or by fine, would seem more natural and effective, in the majority of cases.

But we are not insensible to the fact that all punishment, as well as reward, is fast coming to be measured by its direct effect upon mutual interests and pecuniary advantage or loss It is humiliating to reflect that it is so, so much as the stubborn facts compel us to recognise. And when that high sense of honor, that made the sheriffs of England to be reckoned among the nobility, as *vice comes*, on the deputy of the earl, when that fails to render such important officers insensible to all considerations except the strict law of duty it may become necessary to extend pecuniary penalties so as to embrace all the duties of the sheriff —(*American Law Register.*)

I F R.

Quotations at the Bar —Not long since Mr. Bacon, Q C., whilst commenting upon the scientific evidence in a light and air case, where witnesses had attempted to prove the exact number of degrees of light which would be obstructed, made use of the following happy quotation from Hudribras' description of the philosopher who,—

> "By means of geometric scale,
> Could tell the size of quarts of ale."

The most recent, and perhaps the most remarkable apposite, was by Mr. Grove, Q C., in *Bovill* v. *Goodier*, when dealing with the evidence brought forward to prove anticipation of the patent. Arguing that no patent or discovery could be upheld on the principles put forward by the defendant he said Sir Isaac Newton's discovery of the laws of gravitation might with equal force be said to have been anticipated by Shakespere when, in "Troilus and Cressida," he makes Cressida say:—

> "But the strong base and binding of my love,
> Is as the very centre of the earth,
> Drawing all things to it."