

acts. The first should mean an indictable offence; the latter an offence only carrying a pecuniary penalty (to which the word fine should not apply). Such offences are of three kinds,—those which, from their inherent malice, are indictable at Common Law; those declared indictable by Statute, or by Statute specially named as misdemeanors; and those criminal violations of a Statute, not carrying with it a specific penalty, as are held by a general maxim of law to be indictable. Where these ingredients are wanting, the violation of law should be classed as a penal act only, and where a specific amount has thus been fixed, the penalty to be not over fifty dollars and costs, and the procedure (when not otherwise directed by Statute) to be summary, and the judgment enforced as in misdemeanor—the discretion of the Court to be the same as in misdemeanor, saving, however, the right of an informer or other individual sharing in the penalty. Where the same thing is both a misdemeanor and a penal act,* and process be had in two Courts, the same check (subject to an informer or other individual's rights) which exists on indictment, and suit, when brought for the same trespass, shall extend to the double remedy just referred to. When the jurisdiction over both is vested in the same Court, it shall suffer but one at a time. After punishment being undergone for misdemeanor, no information for a penalty shall by it be allowed for it; and if on information a misdemeanor be disclosed, the Court may certify (if circumstances warrant it) that defendant has been sufficiently punished, which (if not set aside by higher authority; for instance, on an appeal), shall be conclusive as an estoppel.

OF INFAMOUS PERSONS.—All persons rightly attainted or sentenced (lawfully) to death, or who have been sent to the Penitentiary in consequence of an undisturbed capital conviction, or have been rightly sentenced to the Penitentiary on an undisturbed conviction for heinous crime and have not been rehabilitated, shall be deemed infamous persons. They shall be challengeable for cause on any jury; and save for their lives or misprision and seditious &c., † they shall not be tried by a jury, and shall be counted to be at large only “during good behavior,” to which, for special and sufficient cause proven, they may be bound for life.

* See page 12.

† See pages 18 and 20.