

Ponton, for the appellant, cited *Williams v. Jones*, 13 M. & W. 628; *Reynolds v. Tulmon*, 2 Q. B. 644; *Adams v. Ready*, 6 H. & N. 264; *Slater v. McKoy*, 8 C. B. 556; *Albon v. Pyke*, 4 M. & G. 421; *Cates qui tam v. Knight*, 3 T. R. 442.

Hector Cameron, contra, relied on *McPherson v. Forrester*, 11 U. C. Q. B. 362; and *Berkeley v. Elderkin*, 1 E. & B. 806.

HAGARTY, J., delivered the judgment of the court.

The chief point raised on this appeal is whether an action can be brought in the County Court on a Division Court judgment. This court, in *McPherson v. Forrester*, 11 U. C. Q. B. 362, decided in 1863, on demurrer, that an action would not lie on a Division Court judgment, and the language equally points to any higher court (as *e. g.* the County Court,) as to the superior courts.

This case was not appealed, and has apparently remained unquestioned thirteen years. As our decision in this appeal is final, we may not be necessarily bound by the case cited, but we should not depart from it except on the strongest grounds. There it was held that the provisions of the Division Court Acts for enforcing judgment would be interfered with if the plaintiff there could at once go into a higher court and sue on the judgment. The court relied much on the decision in *Berkeley v. Elderkin*, 1 E. & B. 808. Some of the reasons there given may not exactly apply to our execution process against goods in Upper Canada; but Lord Campbell points out one ground common to both systems: "Section 100," (like our section 170, Consol. Stat. U. C., ch. 19), "enacts 'that it shall be lawful for the judge, &c., if he thinks fit, whether or not he shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him, for payment by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt, or damages and costs, forthwith, or by any instalments, or in any other manner, as such judge may think reasonable and just.' This shews," he says, "that there is nothing in the nature of a final judgment in the County" (Division) "Court. The judge has still jurisdiction over this very judgment on which this action is brought. He might now rescind or alter it, and make a new order to pay by instalments, or at any other time. That power given to the judge would be defeated if this action lay. * * I rejoice that we are able to come to this conclusion by the established rules of law; for there can be no doubt that it is most desirable that such actions should not lie. * * Where new rights are given with specific remedies, the remedy is confined to those specifically given."

Another section of our act, 108, allows the judges in case of sickness or other sufficient cause to suspend or stay a judgment.

There seems no doubt that a defendant sued in the higher court, would lose several important advantages allowed him in the Division Courts.

■ We are not prepared to dissent from the reasoning of this English case, followed as it was by his court; and we dismiss the appeal with costs.

Appeal dismissed, with costs.

COMMON PLEAS.

(Reported by S. J. VANKOUGHNET, Esq., M.A., Barrister-at-Law, Reporter to the Court.)

BRASH, QUI TAM V. TAGGART.

Action against Justice of Peace for a penalty—Con. Stats. U. C. ch. 124, sec. 2—County Court jurisdiction to try.

The County Courts have now jurisdiction (under Con. Stats. U. C. ch. 124, sec. 2) to try an action for a penalty against a Justice of the Peace, where the penalty claimed does not exceed \$80.

[C. P., E. T., 1866.]

Appeal from the County Court of the County of Frontenac.

The action was *qui tam* against a Justice of the Peace for not returning a conviction, claiming the penalty of \$80, under Con. Stats. U. C. ch. 124.

The defendant pleaded, Never indebted by statute, on which issue was joined.

At the close of the plaintiff's case the defendant's counsel moved for a nonsuit on the ground, among others, that the County Court had no jurisdiction to try a *qui tam* action under the above statute.

The learned judge overruled the objection, and the jury found a verdict in favour of the plaintiff for the amount claimed.

Against this verdict the defendant moved in the following term, on the same ground as that taken at the trial, and the learned judge, feeling himself bound by the decision of *O'Reilly qui tam v. Allan*, though in fact dissenting from it, made absolute the rule *nisi* to enter a nonsuit.

From this judgment the plaintiff appealed.

Robert A. Harrison, for the appeal, cited *Lawford v. Partridge*, 1 H. & N. 621; *Powley v. Whitehead*, 16 U. C. Q. B. 589; *Campbell v. Davidson*, 19 U. C. Q. B. 222; Con. Stats. U. C. ch. 124, sec. 2; ch. 15, sec. 1; Con. Stats. C. ch. 5, sec. 6, sub-sec. 17; *O'Reilly q. t. v. Allan*, 11 U. C. Q. B. 411; *Haight v. McInnis*, 11 U. C. C. P. 518.

John Patterson, contra, referred to *Espinasse* on Penal Actions, and Con. Stats. U. C. ch. 15, sec. 16, sub-sec. 5.

RICHARDS, C. J., delivered the judgment of the Court.

Since the decision of the case of *O'Reilly qui tam v. Allan*, 11 U. C. Q. B. 411, the statute for recovering penalties similar to those which this action was brought to recover has been somewhat changed in the consolidation, and in looking at the change and considering it in connection with that case, and the case of *Medcalf v. Widdfield*, 12 U. C. C. P. 411, we think we may properly hold that County Courts have jurisdiction in Upper Canada to try actions for penalties under the Con. Stats. (22 Vic. ch. 124.)

The statute 4 & 5 Vic. ch. 12, sec. 2, after declaring that under certain circumstances justices shall forfeit and pay the sum of twenty pounds, together with full costs of suit, proceeds as follows, "to be recovered by any person or persons, who sue for the same by bill, plaint or information, in any Court of Record in Canada West."

The portion of the Consolidated Act referring to the same proceeding reads thus: "To be recovered by any person, who sues for the same, by action of debt or information, in any Court of Record in Upper Canada."