

CURIOSITIES OF ENGLISH LAW.

field, that a contract to pay a certain sum on a certain day was sufficiently performed "according to the original intent of the case" by paying the money with interest at any future time, ought in common sense to have resulted in the overthrow of the proposition. As a matter of fact, although "the original intent of the case" may at first have furnished the only pretext for interference, for a long time past this ground of jurisdiction has exercised little, if any, effect on the decisions. It should be borne in mind that Lord Maclefield, in the leading case of *Peachy v. Duke of Somerset* (1 Stra. 447), expressly limited the right to relief in Equity to those cases "where the penalty is designed only to secure money;" but in course of time this limitation came to be disregarded, and relief was given not only where the penalty was designed to secure money, but also where it was designed to secure the performance of any contract for the non-performance of which pecuniary compensation could be made, the penalty being in Equity regarded merely as a security for the damage really incurred.

The argument for this extension of jurisdiction would seem to run thus: Where a penalty is designed only to secure money, Equity relieves; damages for the non-performance of a contract, for which pecuniary compensation can be made, may be reduced to a sum of money; Equity regards a penalty for the non-performance of such a contract as designed merely to secure that some of money; therefore, the penalty being, if you look into it, designed in point of fact only to secure money, will be relieved against. Once grant the premises, and it is not easy to avoid the conclusion. It does not at present concern us to inquire into the abstract merits of this extension of Equitable jurisdiction. Let it be granted that there are grounds on which it may be justified, but if the "original intent of the case" is all that is to be looked to, it is surely carrying astuteness to the verge of absurdity for the Court to discover within the four corners of a document whereby A. agrees to buy B.'s house for £1,000, on pain of forfeiting £100 to B. if he fails to carry the agreement into effect, that the real intention of the parties was not that A., on refusing to complete his purchase, should pay B. £100, but

that B. should merely have the right to recover from A. such damages for breach of contract as the Court or a jury might be disposed to award; a right which B. would have enjoyed none the less if no penalty had been stipulated for, though in that case he might have run more risk of not getting his money. But we are by no means prepared to assert with confidence that such a construction would not recommend itself to the Judicial intellect. Indeed, it would appear from the Reports that long after the full-blown doctrine came into operation the Judges continued to "lay the flattering unction to their souls" that they were effectuating the true intention of the parties.

That this should be so is, after all, scarcely a matter for surprise, for when we reflect on the somewhat analogous doctrine of conditions *in terrorem*, we appreciate the difficulty of assigning any limit whatever to the ingenuity of the Judges in the construction of the English language. Persons capable of deciding that a testator who gives £100 a-year to his widow, to cease on her marriage, does not really mean the annuity to cease, but only that his widow should think so, and thereby be intimidated into remaining faithful to his memory, clearly do not hold themselves bound by any of the ordinary canons of construction; and surely it by no means exceeds the bounds of possibility that such persons should hold the insertion of a penalty for the non-performance of a contract to be intended merely as a means of frightening a contracting party into performing his agreement, on the chance that he might suppose (contrary to the fact) that it was really intended to enforce the penalty in the event of his failing to fulfil his obligation.

But whatever the precise line of argument may have been by which the Judges justified themselves in supposing that they were carrying the intention of the parties into effect by decreeing that penalties ought to be considered merely in the light of a security for the payment of any damages that might be assessed, it is abundantly clear that the doctrine professed to be based exclusively on the "original intent of the case;" and, as we have seen, that continues, according to the best authorities, as expounded in Tudor's Leading Cases, to be the only osten-