

It was contended by counsel for the appellants that the legislation is in form as well as in substance criminal law, but it was conceded that if the effect of clause (b) is to prohibit the making of such contracts as it deals with, under the penalty which it imposes, the enactment is *intra vires* the Provincial Legislature.

That such is the effect of the enactment is not, I think, open to doubt.

It was said by Lord Hatherley in *In re Cork and Youghal R. W. Co.*, L. R. 4 Ch. 745, at p. 758, that "everything in respect of which a penalty is imposed by statute must be taken to be a thing forbidden and absolutely void to all intents and purposes whatsoever;" and that he states to be the view taken by the learned Judges in *Chambers v. Manchester and Milford R. W. Co.*, 5 B. & S. 568. That a penalty implies a prohibition is stated in *Pangborn v. Westlake*, 36 Iowa 546, 549, to be the general rule, and that was also the view taken by the Supreme Court of the United States in *Miller v. Amenon*, 145 U. S. 421-426.

If it be necessary to the validity of the enactment that it be construed as prohibiting that for the doing of which a penalty is imposed, that construction, upon well understood principles, should be given to it, if the language used at all warrants that being done.

Appeal dismissed with costs.

BRITTON, J.

NOVEMBER 19TH, 1904.

CHAMBERS.

RE CLARK.

*Will—Construction—Bequest to Children at a Certain Place—
Gift to Class—Deceased Child—Right of Issue to Represent
—Absentee.*

Motion by executors of will of Thomas Clark for an order under Rule 938 determining the question whether the children of William Clark, a deceased child of the late Thomas Clark, were entitled to share under the will.

W. Bell, Hamilton, for executors and all persons interested except the children of William Clark.

F. W. Harcourt, for the children of William Clark.

BRITTON, J.—The deceased once resided in England. By his first wife he had four children. His first wife died, and