

**A
TREATISE
ON
THE LAW OF ACTIONS
ON
PENAL STATUTES,
IN GENERAL**

by Isaac 'Espinasse

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A

TREATISE

ON

THE LAW OF ACTIONS

ON

PENAL STATUTES,

IN GENERAL.

—
BY ISAAC ESPINASSE,
OF GRAY'S INN, ESQ. BARRISTER AT LAW.
—

— *Causas age: per lege rubras*
Majorum Leges.

Juv. Stat. 14.

—
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—

—
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PREFACE.

AMONG the multiplicity of authors, who daily oblige the world with the fruits of their labours and legal researches, the subject of the following treatise seems to have escaped them. It is not an unimportant part of the law—particularly at this time, when every session of parliament adds to the penal code of the country. The only detached treatise to be found on the subject, is in Mr. Justice Buller's *Nisi Prius*, of which it constitutes Part the Third. Having written on the former parts of that learned judge's book, my attention was naturally called to this, as necessary to constitute a complete treatise of all matters connected with the law of *nisi prius*.

The kindness and liberality of my profession, having sanctioned by their approbation, the

mode in which my first work, the Digest of the Law of Nisi Prius, was written and arranged, I conceived I could not follow a model more likely to be successful ; particularly as the present work is in fact a continuation of the first. I have in this work, as in that, endeavoured to extract the principles from the cases, and at the same time given the circumstances of the cases themselves, but in as short a statement as the facts could be comprised ; the advantage which results from this is, that if required to be quoted, the facts will appear, and show how far they warrant the principles I have drawn from them.

I am sensible, that, in some respect, it may be imputed to me ; that I have been guilty of repetition, I mean in having analysed into parts some of the longer and more important statutes, and then in having given the words of them at length. My reason was this ; that as questions often arise on trials at nisi prius, which turn on the *words* of the statutes ; to make this treatise useful as a book of practice, it was necessary to give the words of the statutes themselves ; but, as an elementary book, I thought it would be attended with more advantage to the student, to divest the

statute of its technical language, and to give the substance of the several clauses of it : this I adopted from feeling that there is no reading more likely to disgust, than wading through the solemn clauses of an heavy act of parliament, and nothing therefore more likely to be superficially studied.

I now lay the fruits of my labour before the profession, the employment of the leisure and retired hours of the long vacation. What I want in talents, I have endeavoured to make up by industry ; every word and line of this book has been written with my own hand, and every case compared by myself. Notwithstanding, however, all the care which I have bestowed on it, I feel sensible that I may have often erred, and that mistakes will be found : but I hope the profession will pronounce them few, unimportant, and venial.

Sunt delicta tamen quibus ignovisse velimus.

HOR. ART. POET.

PREFACE

TO THE

AMERICAN EDITION.

THE concluding part of Mr. Espinasse's Treatise on the Law of Actions on Penal Statutes, relates exclusively to the several statutes of *Winton*—the 21 *Hen. VIII. c. 13. for non Residence.*—the 2 & 3 *Ed. VI. c. 13. for subtractions and not setting out of Tythes—* and the 5. of *Eliz. c. 4. in following a trade not having served an apprenticeship.* The whole of this part is omitted in this edition, there being no analogy in the provisions of the abovementioned statutes to any laws existing in this country,

Exeter, N. H. July, 1822.

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A
TREATISE
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ON
PENAL STATUTES.

INTRODUCTION.

ACTIONS upon statute are, such as are given by different acts of parliament, either as the means of redress specifically given to the party grieved, or as the means of giving effect to the statutes themselves by inflicting a penalty for the breach of them.

These different objects form the two classes of statutes on which actions can be founded; the former are called remedial, the latter penal statutes.

Statutes usually termed remedial are, however, in some respects penal; for the sum recovered in actions under them is not generally confined to what amounts

INTRODUCTION.

to actual amends, but goes much beyond it, and operates as a penalty against the party who has broken the statute. Thus the statute 29 Eliz. ch. 4. gives an action of debt to recover treble damages against the sheriff who takes more poundage on levying execution, than the statute allows; to the extent of the single damage it may be considered as remedial, beyond that, it is penal against the sheriff.

3 Saund. 376.
n. 7. Of the old statutes; that of Winton, which enables a party, who has been robbed, to recover against the Hundred the sum taken from him, is an example of an action on the statute purely remedial, in that the party recovers only to the extent of his actual loss.

It is not proposed in this work to treat of remedial statutes, except in the case of a few of the leading ones, which form a material head of the law; the immediate object is; a treatise upon penal statutes only, and this involves in it the general nature of such statutes, and the course of proceeding for the recovery of the penalties given by them. This will be done in the first part of this treatise under the following general heads:—

1. Of the particular nature and description of penal statutes, as giving a right to a common informer to sue for and recover the penalties.

2. Of the particular modes of proceeding for the purpose of recovering the penalties, and how they are to be instituted.

3. Of the pleadings and evidence used in those proceedings.

And, lastly, of the subsequent proceedings to judgment and execution.

In the second part I shall consider distinctly the statutes themselves, the determinations which have taken place on each, and the modes of proceedings under them.

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