

“to furnish another with the means of transgressing the law, knowing that he intends to make that use of them.”

The jury have here found that the hay, grain and barn-room, with the services performed in tending the cattle, were all furnished under full knowledge in the plaintiff that the cattle were destined to the enemy, and with an express design in him to facilitate their passage over the lines, by keeping them on his farm in the vicinity of the frontier, till *Bailey* could call for them with safety.

The plaintiff's claim, then, arises *ex turpi causa*; from knowingly and designedly furnishing another with means to transgress the law.

Were those who minister in the temple of justice compelled by law to assist in adjusting a concern of this description, it would be a task in the highest degree odious and disgraceful.

Let judgment be entered on the verdict.

Beach
vs.
Kezar.

STRAFFORD, SEPTEMBER TERM, 1818.

JOHN MOONEY, J. P., *versus* JOHN DEMERRIT.

To debt upon a bond with condition, the defendant pleaded “omnia performavit.” The plaintiff in his replication assigned several distinct breaches of the condition. To this replication the defendant demurred specially for duplicity—held, that the replication was bad.

The statute of 8 and 9 W. 3, cap. 11, has never been adopted in this state.

DEBT upon a probate bond. The defendant craved oyer of the bond and of the condition, and then pleaded “omnia performavit.” The plaintiff in his replication assigned four distinct breaches of the condition. Upon which the defendant demurred specially, and assigned duplicity as a cause of demurrer.

The cause was argued by *J. Mason*, on the part of the defendant, and by *J. Smith*, for the plaintiff.

RICHARDSON, C. J., delivered the opinion of the court.

At common law, when the defendant pleaded a general performance to debt upon a bond with condition, the plaintiff

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could assign in his replication only one breach; and if he assigned more, his replication was bad for duplicity. *Gilbert's cases* 238, *African Com. vs. Mason*.—2 *Burrows* 772, *Cornwallis vs. Savery*.

The reason of this was, because if the plaintiff shewed any single breach of the condition, he was entitled to the whole penalty. It was therefore wholly unnecessary to shew more than one breach.

But now, by the statute of 8 and 9 W. 3, cap. 11, § 8, the law is altered in England, and the plaintiff may assign in his replication as many breaches as he pleases. 1 *Saunders* 58, note 1.—3 *Saunders* 187, note 2. And if that statute has been adopted in this state, the replication in the case before us is unquestionably good. But the statute of 8 and 9 W. 3 was never adopted in this state. The provisions of our provincial act of 11 W. 3, cap. 4, § 8,(1) which were revised and re-enacted in our statute of February 9, 1791,(2) rendered the adoption of it wholly unnecessary, because they furnished an adequate remedy for the very evils which the English statutes were intended to remedy. Our statutes, however, did not alter the mode of pleading in actions of debt upon bonds with condition, but left the proceedings as at common law, until the penalty was found to be perfected, when the equity power of the court commenced, so that a replication assigning more than one breach is in this state still bad for duplicity. The English statute of 8 & 9, W. 3, was never adopted in Massachusetts, as was expressly decided in the case of *Sevey vs. Blacklin et al.*, 2 *Mass. R.* 541, and probably for the same reason. As the provisions of their statutes on this subject are nearly the same as ours, we consider this as direct authority, and are of opinion that the replication in this case is bad.

(1) Prov.
Laws 7.

(2) 1 Laws 63.