

of a penalty to a private prosecutor, with a single exception named in the act. It did not repeal section 8, chapter 60, Laws 1891, affixing a penalty to the offence with which the defendant is charged. The substance of the defendant's contention is that the enforcement of the forfeiture prescribed for the offence of which he is charged is a civil proceeding, a moiety of the penalty being given to a private prosecutor, and that since, under section 1, chapter 257, of the Public Statutes, such a penalty or forfeiture may be recovered by an action of debt (a civil proceeding) by any person who will sue therefor, unless otherwise provided, the procedure provided in this case must be regarded as civil. If there were any question as to the soundness of the views already expressed upon the law as it stood before the act (Laws 1899, c. 31) repealing all provisions for the benefit of prosecutors, there can now be no question that an indictment or information for the collection of the forfeiture is the proper and only method of procedure, because since the repeal of these provisions no private person can maintain such a suit. A forfeiture prescribed by statute for an offence created by statute is properly recovered by indictment or information when no person is named to take the penalty (*State v. Tappan*, 15 N. H. 91; *Hatch v. Robinson*, 26 Vt. 737, 739), and is so recognized by the statute. P. S., c. 257, s. 11. As no person is now entitled to prosecute for the penalty, there is no ground upon which to urge that under the section last cited an indictment must be postponed one year or any time, for the time within which an individual may bring a private prosecution has expired in all cases by force of the repealing statute.

To what extent, if at all, various provisions of the statutes giving to towns, school districts, or other subdivisions of the state penalties in special cases are affected by the repealing statute of 1899, is a question not germane to the present inquiry and is not considered.

Exception overruled.

PIKE, J., did not sit: the others concurred.

Merrimack, }
Dec., 1899. }

DIXON v. GUAY.

The unauthorized receipt of a bank-book by a collecting agent will not operate as payment of the debt, if the transaction is repudiated by the principal within a reasonable time after it is brought to his knowledge.

ACTION FOR POSSESSION, under the landlord and tenant act. Facts found by a referee, as follows: December 1, 1898, the

plaintiff owned the premises in question, and the defendant occupied them at a monthly rental of six dollars per month, payable in advance. At this time she demanded ten dollars per month, which the defendant refused to pay, but did offer her six dollars, which she declined. February 27, 1899, the defendant deposited in the Manchester Savings Bank, in the name of the plaintiff, the sum of twelve dollars, to pay for the January and February rent, taking a book therefor in the name of the plaintiff. On or about March 1, Mrs. Kehoe, a sister of the plaintiff and her agent in this matter, demanded the rent, and the defendant paid her six dollars for the December rent, and gave her the bank-book aforesaid, which she took, saying it was all right. There was no evidence that Mrs. Kehoe had authority to accept anything as payment for rent other than money, and I find she had no such authority, unless implied as a matter of law. I find, however, that this book was accepted by Mrs. Kehoe for the rent. Within a reasonable time the plaintiff returned the book to the defendant, who has since had it, and demanded twelve dollars in money for the two months' rent, which the defendant refused to pay. The plaintiff then served a seven days' notice to quit on the defendant, which was sufficient to entitle her to possession of the premises unless the receipt of the bank-book, as herein stated, shall be held to be payment of rent for January and February, in which event there is to be judgment for the defendant. The court ordered judgment for the plaintiff, and the defendant excepted.

Sullivan & Broderick, for the plaintiff.

David W. Perkins, for the defendant.

PARSONS, J. "That the power of a collecting agent by the general law is limited to receiving for the debt of his principal that which the law declares to be a legal tender, or which is by common consent considered and treated as money, and passes as such at par, is established by all the authorities. The only condition they impose upon the principal, if anything else is received by his agent, is that he shall inform the debtor that he refuses to sanction the unauthorized transaction within a reasonable period after it is brought to his knowledge." *Ward v. Smith*, 7 Wall. 447, 452; *Todd v. Reid*, 4 B. & Ald. 210; *Bartlett v. Pentland*, 10 B. & C. 760; *Howard v. Chapman*, 4 C. & P. 508; Sto. Ag., ss. 98, 413.

Exception overruled.

PIKE, J., did not sit: the others concurred.