

There a certain statute gave a *qui tam* action to informers, under which; "one-half of the money recovered as a penalty in any case arising under the laws relating to inland fisheries shall be paid to the person making the complaint in the case in which the same is recovered, and the remainder to the commonwealth." (Stat. of 1869, chap. 384, sec. 33.)

There the court held that the statute did not authorize the informer to prosecute or manage the suit; that an interest in the penalty is a different thing from the right to bring the action in his own name, the court (p. 140) saying:

"It is a general rule that no such action can be maintained by the informer unless power is given to him by the statute for that purpose."

Colburn *vs.* Swett, 1 Met., 232.

Wiley *vs.* Yale, Ib., 553.

Flemming *vs.* Bailey, 5 East., 313.

Barnard *vs.* Gostling, 2 East., 569.

Davis *vs.* Edmonson, 3 B. & P., 382.

The opinion concludes in the following words:

"The statute in question does not in express terms give a right to any private prosecutor to bring an action in his own name, nor does it, in our judgment, by any necessary implication. 'When no such right is given to any individual, or body of individuals, then, as the right to enforce all penalties made to insure obedience to general laws is in the commonwealth,' they are to be prosecuted by the commonwealth."

Colburn *vs.* Swett, 1 Met., 232, 236.

Nye *vs.* Lamphere, 2 Gray, 295.

"A *qui tam* action is a well-established remedy, which is to be resorted to only in cases where it is expressly given." (Wheeler *vs.* Goulding, 13 Gray, 539.)

"In the case of Levy *vs.* Gowdy, 2 Alken, 320, which is relied upon by the plaintiff, the question as to the proper party to bring the action was not raised.