

on and the particular section thereof must be referred to with certainty, it was therefore insufficient to refer in said complaint to different statutes without specifying which. It was also held, as expressed in the head-note, that—

“All the essential facts must be *distinctly* alleged. *Exceptions* forming a part of the statute constituting the offense should be negative. In this case *held* on demurrer necessary to allege (a) that the defendant had no patent; (b) that the stamped article contained the patented improvement; (c) that it was stamped without consent of plaintiff’s assigns or representatives.”

In the body of the opinion the court says :

“2. In an action upon a penalty, the statute imposing it, and the section thereof, must be pleaded with certainty. (Code, § 1897. See *Brown vs. Pond*, 5 Fed. Rep., 31-41; *Brown vs. Church*, *id.*, 41.) It is therefore improper and insufficient to refer to different statutes without specifying which is relied on. The common-law rule was the same. (*Cross vs. U. S.*, 1 Gall., 30-31; *Sears vs. U. S.*, *id.*, 257; *Jones vs. Vanzandt*, 2 McLean, 630, and 5 How., 229; *Briscoe vs. Hinman*, Deady, 588; *U. S. vs. Babson*, 1 Ware, 452.) This objection is therefore sustained.

“3. *Every* essential fact, to constitute a statutory offense, must be *distinctly* alleged. (*Ferrett vs. Atwill*, 1 Blatch, 151.) Hence, those conditions or qualifications which the statute makes exceptions in constituting the offense should be negatived by the pleader. (That practice at law, Control. See also *Comw. vs. Davenger*, 10 Phil., 478; *Canfield vs. Mitchell*, 3 Conn., 359.)

The case of *U. S. vs. Morris et al.* was debt brought in the name of the United States to recover the penalty of \$100 prescribed by the 5th section of the act of 29th of August, 1842, that being a section substantially the same as what is now section 4901 of the Revised Statutes. There was nothing in that section limiting the penalty to cases where the article stamped was patentable, and it gave the action to any person or persons who should sue for the same, giving the informer one-half the recovery.