

*murrer*; (2) that in an action on a statute the party prosecuting must allege every fact necessary to make out his title and his competency to sue; (3) that the language of the statute is to be *particularly* adhered to in the construction of penal laws.

In the body of the opinion the court uses the following language (p. 155):

"In actions directly upon a statute, or on rights derived from a statute, the party prosecuting must allege, and consequently prove, *every* fact necessary to make out his title to the thing demanded, and *his competency* to sue for it. (Com. Dig. Action on Stat., A. 1, 2, 3, and Pleader, c. 76.) An informer cannot support an action unless there be an express provision in the statute enabling him to sue. (*Rex vs. Malland*, 2 Stra., 828; *Fleming vs. Bailey*, 5 East, 313.) And, if the statute creating the penalty and bestowing it upon the informer does not give the mode of proceeding, he is bound to set forth the special matter upon which the right of action arises, and allege and prove in what way the penalty vests in him. (*Cole vs. Smith*, 4 Johns., 193; *Bigelow vs. Johnson*, 13 Johns., 428; *Smith vs. Merwin*, 15 Wen., 184; *Fairbanks vs. Antrim*, 2 M. Hamp., 105; *Ellis vs. Hall*, 2 Aik., 41.) The doctrine, in effect, is applicable to actions founded upon statutes other than for penalties; for, when a statute is made to remedy any mischief or grievance, or bestow any interest or right upon an individual, the mode of remedy, when one is designated by it, must be EXACTLY followed. (*Stowell vs. Flagg*, 11 Mass., 264; *Stevens vs. The Proprietors of the Middlesex Canal*, 12 Mass., 466.) And, if the form of remedy is not pointed out, and the law supplies one by implication, the plaintiff must aver and prove *every* fact necessary to show the existence of the right in him under the statute. (*Bigelow vs. The Cambridge & Concord Turnpike Company*, 7 Mass., 202; *Bigelow vs. Johnson*, 13 Johns., 428.) *We think, under these well-established rules at law, that the two plaintiffs prosecuting this action do not come within and satisfy the provisions of the statute giving the penalty 'to the person who shall sue for the same.'*"

"There is a manifest distinction between giving a penalty to a common informer and imposing one for the benefit of