

sue with good Faith any Action popular, and the Defendant or Defendants in the same Action plead any manner of Recovery of Action popular in bar of the said Action, or else that the same Defendant or Defendants plead, that he or they before that time barred any such Plaintiff or Plaintiffs in any such Action popular, that then the Plaintiff or Plaintiffs in the Action taken with good Faith may aver, that the said Recovery in the said Action popular was had by Covin, or else to aver that the said Plaintiff or Plaintiffs was or were barred in the said Action popular by Covin, that then if after the said Collusion or Covin so averred be lawfully found, the Plaintiff or Plaintiffs in that Action sued with good Faith, shall have Recovery according *to the nature of the Action, and Execution upon the same in like wise and effect, as though no such afore had been had. (8) And moreover, that it is enacted and ordained by the Authority aforesaid, that in every such Action popular, wherein the Defendant or Defendants shall be lawfully condemned or attainted of Covin or Collusion, as is afore said, that every of the same Defendants have Imprisonment of Two Years by Process of *Capias* and Outlagary, to be sued within the Year after such Judgment had, or at any time after, till the said Defendant or Defendants shall be had and imprisoned, as is afore said, and that as well at the King's Suit, as of every other that will sue in that behalf: (9) And that no Release of any common person hereafter to be made to any such party, whether before or after any Action popular, or Indictment of the same had or commenced, or made hanging the same Action, be in any wise available or effectual to let or surcease the said Action, Indictment, Process, or Execution. (10) Provided always, that no Plaintiff or Plaintiffs be in any wise received to aver any Covin in any Action popular, where the Point of the same Action, or else the Covin or Collusion have been once tried, or lawfully found with the Plaintiff or Plaintiffs, or against them, by Trial of Twelve Men, and not otherwise.

What are penal actions.—This Statute is said not to extend to cases where the penalty is given to the party grieved, Bac. Abr. Action, *qui tam*, D. A penal action is sometimes called an action upon statute—sometimes a *qui tam* action from the language formerly used in the proceedings, as *qui tam pro domino rege quam pro se ipso*, &c., it being given to him who will sue for it for the King and for himself, and thence also sometimes a popular action, because given to any one. If a statute, however, gives a