

Elec. Case.]

REGINA V. STURDY—NOTES OF CANADIAN CASES.

[Sup. Ct.

it is indictable if the prohibited thing is done? You will find in the case of *Reg. v. Buchanan* 8 Q. B. 883, s. c. 10 Jur. 736, the doctrine laid down expressly, that whenever a person does an act which a statute on public grounds has prohibited generally—and it is not necessary to prohibit it in express language—he is liable to an indictment. There is nothing in the statute prohibiting it; it is only by implication that it can be contended it is prohibited. [WILSON, C.J., If that is the only point, I think I should rule against you, unless you wish to look at the case of *Reg. v. Buchanan*].

Holkins, Q.C., for the Crown, contended that an indictment would lie. The election laws only gave to persons possessing defined qualifications the right to vote at elections: an unqualified person voting was therefore guilty of an unlawful act and a contravention of the statute. And though there was nothing in the election or criminal laws expressly prohibiting such unlawful voting, the Interpretation Act (31 Vict. c. 1, D.), provided that any wilful contravention of any Dominion Act, which was not made an offence of some other kind, should be construed to be a misdemeanour and punishable accordingly.

WILSON, C.J.—I think the decision in *Reg. v. Buchanan, supra*, applies; and I shall therefore give judgment for the Crown on the demurrer, and I will allow the defendant to plead over.

The defendant thereupon pleaded "Not Guilty"; but after a conviction for perjury in taking the election oath, he subsequently withdrew his plea and pleaded guilty.

The learned judge then sentenced him to pay a fine of \$30 on the conviction for perjury, and another fine of \$30 on the conviction for unlawful voting, and to be imprisoned in the common jail for three days concurrent, and until the fines were paid.

NOTES OF CANADIAN CASES.

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SUPREME COURT OF CANADA.

Nova Scotia.]

[Feb. 15.

SOVEREIGN FIRE INSURANCE CO. V. MOIR.

Insurance.

A policy of insurance on the respondent's property contained the following provisions:

"In case the above described premises shall, at any time during the continuance of this insurance, be appropriated, or applied to, or used for the purpose of carrying on, or exercising therein any trade, business, or vocation denominated hazardous or extra-hazardous . . . unless otherwise specially provided for, or hereafter agreed to by this company in writing, or added to or endorsed on this policy, then this policy shall become void."

"Any change material to the risk, and within the control or knowledge of the assured, shall avoid the policy as to the part affected thereby unless the change is promptly notified in writing to the company or its local agent."

When the insurance was effected the insured premises were occupied as a spool factory, and it was described as a spool factory in the application. During the continuance of the policy a portion of the building insured was used for the manufacture of excelsior, but the fact of its being so used was not communicated to the company or its local agent. A loss by fire having occurred, the company resisted payment on the ground that the manufacture of excelsior on the premises avoided the policy under the above conditions.

On an action to recover the insurance the plaintiff obtained a verdict, the jury finding, in answer to questions submitted on the trial, that the manufacture of spools was more hazardous than that of excelsior, and that the risk was not increased by adding the manufacture of excelsior in the building. The Supreme Court of Nova Scotia sustained the verdict.