

be afterwards a particular provision, and a particular remedy given. The author cites from *Clegg v. Earby Gas Co.*, [1896] 1 Q. B. 592 (at 504): "Where a duty is created by statute, which affects the public as the public, the proper mode, if the duty is not performed, is to indict, or take the proceedings provided by the statute." When a new offence is created by statute, and a penalty is annexed to it, by a separate and substantive clause, it is not necessary for the prosecutor to sue for the penalty; but he may proceed on the prior clause, on the ground of its being a misdemeanour *Rex v. Harris*, 4 T. L. R., at p. 205.

In Russell on Crimes, 7th ed., p. 12, it is said: "Where the same statute, which enjoins an act to be done, contains also an enactment providing for a particular mode of proceeding, as commitment, in case of neglect or refusal, it has been doubted whether an indictment will lie." The author, however, adds "but all that the authorities establish on this point is that where there is a substantial, general prohibition, or command in one clause, and there is a subsequent clause which prescribes a specific remedy, the remedy by indictment is not excluded."

The question was gone into by the late Mr. Justice Robertson, in *Rex v. Meehan*, 3 O. L. R. 567, both as to the power of the legislature to enact the Municipal Act, and to regulate elections thereunder, and to prescribe the penalty, or forfeiture for a wilful breach thereof, and also, as to the cases where indictment will lie; some of the authorities there cited, have a bearing on the present case.

Lord Denman, C.J., in *Regina v. Buchanan*, 8 Q. B., at p. 887, declares that wherever a person does an act which a statute, on public grounds, has prohibited generally, he is liable to an indictment. He agrees, however, that where in the clause containing the prohibition, a particular mode of enforcing the prohibition is prescribed, and the offence is new, that mode only can be pursued; but he explains this by saying that the case is then, as if the statute had simply declared that the party doing the act, was liable to the particular punishment; and he adds "but where there is a distinct absolute prohibition the act is indictable."

In the present case there is in one clause of the statute, a distinct absolute prohibition, the penalty being provided by a separate and substantive clause.