

the section "shall be liable to imprisonment for a term not exceeding six months, with or without hard labour."

G. F. Henderson, K.C., for the defendant.

J. A. Ritchie, for the Crown and the Police Magistrate.

KELLY, J.:—The act prohibited by sub-sec. 1 (b) of sec. 193 is not indictable per se. It is urged on behalf of the defence that sec. 164 of the Criminal Code cannot be applied, as sec. 193 . . . names a punishment; and that, therefore, the Police Magistrate has no jurisdiction.

Section 164 of the Criminal Code declares every one to be guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any Act of the Parliament of Canada or of any Legislature in Canada, by wilfully doing any act which it forbids, or omitting to do any act which it requires to be done, unless some penalty or other mode of punishment is expressly provided by law.

There are many cases dealing with acts done in contravention of statutes prohibiting the doing of such acts. The subject and the application of numerous decisions are discussed in Russell on Crimes, 7th ed. (1909), p. 11 et seq. It is there stated that where an act or omission, which is not an offence at common law, is made punishable by a statute, the question arises whether the criminal remedies are limited to the particular remedy given by the terms of the statute, or, in other words, whether the remedy given by the statute is exclusive of or alternative to other remedies given by other statutes or the common law; and that where an act or omission is not an offence at common law, but is made an offence by statute, an indictment will lie where there is a substantive prohibitory clause in such statute, though there 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 p. 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.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