

of St. Thomas and the defendant to shew cause why the magistrate should not be directed to receive the oath of Turner to an information preferred against the defendant. The rule was granted under R. S. O. ch. 88, sec. 6. The information sought to be laid against the defendant was for that he did, on the 6th January last, at St. Thomas, after having voted once and not being entitled to vote again at the election for aldermen, wilfully and corruptly apply for a ballot paper, in his own name, and did wilfully and corruptly vote three times for aldermen, and did thereby commit an interference with an election. The magistrate held (see 1 O. W. R. 136) that he had no jurisdiction to hear the case and dispose of it summarily, or to hold a preliminary investigation and determine whether the accused should be committed for trial if the evidence warranted him in so doing.

By 1 Edw. VII. ch. 26, sec. 9 (O.), it is provided that in towns and cities where aldermen are elected by general vote, every elector shall be limited to one vote. Section 193 of the Municipal Act declares (f) that no person shall, having voted once, and not being entitled to vote again, apply for a ballot paper in his own name; and by sub-sec. 3, a person guilty of any violation of this section shall be liable to imprisonment for a term not exceeding 6 months. By sec. 138 of the Criminal Code, every one is 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, unless some penalty or other mode of punishment is expressly provided by law.

J. M. McEvoy, London, for the applicant.

E. E. A. DuVernet, for the magistrate and the defendant.

ROBERTSON, J.—As the section of the Act of 1 Edw. VII. referred to does not contain a particular mode of enforcing the prohibition, and the offence is new, the only remedy is by indictment, as provided by sec. 138 of the Code. Therefore, the magistrate had jurisdiction to take the information in question and to issue a summons to the defendant to hear and answer the charge, and to hear the case and determine whether the defendant should be committed for trial, and moreover he was bound to do so. And, as the magistrate had not exercised any discretion, but had simply declined jurisdiction, it was the duty of the Court to order him to exercise his jurisdiction.