

1 (b) of sec. 193, of the Consolidated Municipal Act, 3 Edw. VII, ch. 19, on the ground of want of jurisdiction to deal with the charge either under that Act, or as an indictable offence.

Sub-sec. 1 (b) of sec. 193, provides that no person shall "fraudulently put into any ballot box any paper, other than the ballot paper, which he is authorized by law, to put in." By sub-sec. 3, of sec. 193, it is provided that a person (other than the Clerk of the Municipality), guilty of any violation of this section, shall be liable to imprisonment, for a term not exceeding six months, with or without hard labour.

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

Henderson, K.C., for the defendant.

HON. MR. JUSTICE KELLY:—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, under which the proceedings are brought, names a punishment, and that therefore, the police magistrate has no jurisdiction. Section 164 of the Criminal Code, declares everyone 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), at 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 questions arise, 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