

11,12; Archbold's Criminal Pleading, 24th ed., p. 3; Craies's Statute Law, 2nd ed., p. 224; Maxwell on Statutes, 5th ed., p. 651. . . .

The only difficulty arises where the statutory offence was an offence at common law; or where the statute lays down a different method of procedure or prescribes a different penalty or punishment.

The offence with which the accused is charged in this case was not an offence at common law: *Regina v. Hogg*, 25 U.C.R. 66; so that no difficulty arises on this point.

The punishment for violation of the statute is prescribed in sub-sec. 3 of sec. 193. That, however, is not now in question, as the whole question on this appeal is, whether the Police Magistrate should be prohibited from taking the preliminary examination upon the information laid.

As I have said, neither sec. 193 nor any other part of the Municipal Act provides what procedure is to be adopted for enforcing the punishment prescribed for a violation of the provision of the Act now in question. There is, consequently, nothing to prevent the adoption of the procedure laid down by the authorities above-cited; that is, by indictment, as "such method of proceeding does not manifestly appear to be excluded by it," to use the language of Hawkins; or, to use the language of Maxwell, "it omits to provide any procedure."

It was argued on behalf of the appellant that sec. 164 of the Criminal Code precluded proceeding by way of indictment. . . .

The answer to this argument is, that the present proceeding is not being taken under this or any other section of the Criminal Code, but under the common law, which has not in this respect been superseded or repealed by the Code. The section of the Code does not go so far as the common law. It provides for the cases of disobedience where no penalty or other mode of punishment is expressly provided by law; but does not deal with or affect cases like the present where other punishment is expressly provided for.

An examination of the various cases shews that the difficulties have arisen with those statutes which have prescribed either a particular procedure or punishment or both. In such cases a question often arises whether the particular procedure or punishment prescribed in the statute supersedes the common law procedure and punishment, or whether the prosecutor can proceed under the one or the other at his option; or, in other words, whether the statutory remedy is in lieu of or in addition to the common law remedy.