

simply joined issue on the statement of defence, it would not have been shewn what was the point really in controversy between the parties. Far from denying his inability to work through illness, the plaintiff says that this forms no ground for defendant's refusal to pay him \$40 a week, for the whole remaining period of the ten years. As the pleadings now stand, this is clearly brought out as being the point to be decided. Putting the matter briefly, the plaintiff says "I am entitled to \$40 a week from 25th May, under our agreement." "No," says defendant, "I paid you as long as you could work, as you had agreed to do, and longer." "No," replies the plaintiff, "the consideration for my weekly wage of \$40, was not my working, but the sale of the assets, and good-will of our previous firm to you." In this view the reply is not objectionable, and the motion is dismissed. Under the peculiar facts of the case, the costs may properly be in the cause. See *Hall v. Eve*, 4 Ch. D. 341, where the function of a reply is considered and explained. This case was cited and followed in *McLaughlin v. Lake Erie*, 2 O. L. R. 151, as pointed out by counsel for plaintiff.

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HON. MR. JUSTICE KELLY.

FEBRUARY 25TH, 1913.

REX v. DUROCHER.

4 O. W. N.

*Criminal Law—Procedure—Motion to Quash Indictment—Crim. Code, s. 164—Disobedience to Statute—Municipal Act—3 Edw. VII., c. 19, s. 193 (1) (b)—Putting Unauthorized Papers in Ballot Box—Penalty Fixed by Subsequent Clause of Statute—Act not Illegal at Common Law—Motion Dismissed.*

KELLY, J., *held*, that where a clause of a statute contains a distinct absolute prohibition, making an act illegal which was not illegal at common law, and a later separate and substantive clause imposes a penalty for the doing of such act, an indictment will lie therefor under s. 164 of the Criminal Code, which makes wilful disobedience to a Dominion or Provincial Statute an indictable offence.

*Rex v. Mechan*, 3 O. L. R. 567;

*Reg. v. Buchanan*, 8 Q. B. 887, and

Russell on Crimes, 7th ed., p. 11 *et seq.*, referred to.

Motion for prohibition to the police magistrate at Ottawa, forbidding him to try defendant for an alleged breach of s. 193 (1) (b), of the Consolidated Municipal Act, 3 Edw. VII., c. 19, dismissed with costs.

Motion by the defendant for an order prohibiting the Police Magistrate for the City of Ottawa, from proceeding on an information laid against the defendant, under sub-sec.