

APRIL 7TH, 1913.

\*REX v. DUROCHER.

*Criminal Law—Police Magistrate—Jurisdiction—Prohibition—Indictable Offence—Fraudulently Depositing Paper in Ballot Box at Municipal Election—Municipal Act, 1903, sec. 193, sub-sec. 1(b), sub-sec. 3—Criminal Code, sec. 164—Act Prohibited by Statute—Specific Remedy—Remedy by Indictment.*

Appeal by the defendant from the order of KELLY, J., ante 867, dismissing a motion by the defendant to prohibit the Police Magistrate for the City of Ottawa from proceeding on an information laid under sec. 193, sub-sec. 1 (b), of the Municipal Act, 1903, against the defendant, for having fraudulently put into a ballot box used at a municipal election a ballot paper purporting to have been used by a person who did not vote at the election—in effect, for personation.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

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

J. R. Cartwright, K.C., for the Crown.

MACLAREN, J.A. :— . . . There is no provision in the section in question or elsewhere in the Act as to what procedure is to be adopted or followed.

The law upon the subject is thus stated in Hawkins's Pleas of the Crown, book 2, ch. 25, sec. 4: "Wherever a statute prohibits a matter of public grievance to the liberties and security of a subject, or commands a matter of public convenience, as the repairing of the common streets of a town, an offender against such statute is punishable, not only at the suit of the party aggrieved, but also by way of indictment for his contempt of the statute, unless such method of proceeding do manifestly appear to be excluded by it."

This rule has been generally approved and followed in the modern cases and by the leading text-writers. See *Regina v. Buchanan*, 8 Q.B. 883; *Regina v. Tyler and International Agency Co.*, [1891] 2 Q.B. 588, at p. 592; *Regina v. Hall*, [1891] 1 Q.B. 747; *Rex v. Meehan*, 3 O.L.R. 567; *Russell on Crime*, 7th ed., pp.

\*To be reported in the Ontario Law Reports.