

Province of Nova Scotia.

SUPREME COURT.

Russell, J.] THE KING v. DRAKE [March 14, 1918.

Habeas Corpus—Bail—Bail on concurrent charges.

The prisoner, James Drake, was committed on March 13th, 1918, by the Stipendiary Magistrate of the City of Halifax, to jail and refused bail, on charges of theft on March 3rd, 1918, of five dollars, and escaping from custody from the City Prison on December 6th, 1917, under section 185 of the Criminal Code, to take his trial on any indictment found against him, at the March term of the Supreme Court at Halifax, sitting for criminal business on March 19th, 1918.

A prosecution was also commenced against him on March 4th, 1918, and was now tried and awaiting judgment before the same Justice for a second offence against the N.S. Temperance Act, on which the same Stipendiary Magistrate remanded him to jail and refused bail. The Chief of Police at Halifax and keeper of the City Prison held a warrant of August 20th, 1917, to collect a penalty of \$50.00 &c. on a conviction of that date for a violation of the N.S. Temperance Act, which Drake alleged was satisfied by imprisonment in default of payment of the penalty. The accused applied to Russell, J., for writs of *habeas corpus* and *certiorari* in aid under the Provincial Liberty of the Subject Act, addressed to the Goaler, Keeper and Chief of Police, to be admitted to bail, etc., and after a return to these writs:—

Held, as the applicant could be bailed, bail was allowed him on the charges of theft and escaping, conditioned to appear and take his trial, etc., at the March term, 1918, at Halifax, and also, following *R. v. Vincent*, 22 Can. Cr. Cas. 98, he should be bailed to appear on a subsequent date (April 8th, 1918), which would not interfere with his trial on the indictments, if found, conditioned to appear, receive and submit to judgment, before the Stipendiary Magistrate, in respect of the prosecution then pending under the Nova Scotia Temperance Act, and also to surrender into the custody of the Keeper and Chief of Police, on the last mentioned date, if so notified, if it was desired to enforce the warrant of August 20th, 1917, for the penalty against him.

Power, K.C., for the prisoner; *Cluney*, K.C., for the Crown.