

having sold liquor during prohibited hours on Saturday, Sept. 5, 1903; the two previous convictions having been alleged for a similar offence, the first on Feb. 11, 1899, and the second on July 16, 1903. While the defendant was being cross-examined as a witness for the defence the counsel for the prosecution asked him whether he had been convicted as alleged in the information, which he admitted. A conviction was then recorded against the defendant as a third offence, and a fine of \$80 and \$36.92 costs imposed. The defendant appealed to the County Judge in Chambers.

Haverson, K. C., and John C. Eccles, for the appellant. J. Murphy and J. F. McDonald, contra.

The learned judge reserved judgment on the legal objections raised; the evidence to be taken de novo should the objections be overruled.

COLTER, Co. J.:—Several objections were taken to the conviction by counsel for the appellant and these were all serious. The Legislature has laid down certain rules and regulations to be observed in such cases. It is not the duty of the magistrate or judge to consider, nor has he any right to consider, whether these regulations are wise, prudent, or necessary; it is incumbent upon him simply to obey them. Sec. 101 of the Act is headed in large type, and prescribes not only what should, but what *shall*, be done in all such cases. Sec. 8 sub-s. 2, of the Interpretation Act (R.S.O. c. 1) says "the word *shall* shall be construed as imperative and the word *may* as permissive.

The language used in sub-s. 1 of sec. 101 of the Liquor License Act is as imperative as words can make it. Not only does the word *shall* occur therein, but the word *may* is also present there in the sixth line in a different sense. The word *then* in the third line of this sub-section is grammatically an adverb, meaning at that time. In the construction of statutes and wills it is sometimes interpreted differently. Its meaning in this section is, however, emphasized by putting immediately after it the words *and not before*, to indicate that in this section it is an adverb, meaning at that time, or subsequently, and not before. When the Legislature has prescribed the duties of the justices or police magistrate so positively and has gone to the extreme of being ungrammatical in the ordinary sense in order to make its wishes clearly known and understood, I am compelled to give effect to its directions. More particularly in cases of a criminal or penal character it is incumbent on the prosecution to conform exactly to the provisions of the statute. It is surely not too much to ask of the presiding magistrate or justice of the peace that he should read over carefully the section of the statute under which proceedings are taken, and that he should follow the directions prescribed as carefully as possible. It is not proper to substitute his own views for those prescribed.

If I were to give effect to this conviction I would be obliged to repeal for the purpose of this case the section in question. This of course I have neither the power nor the inclination to attempt to do.