

out license in violation of 57 & 58 Vict. c. 51(D), s. 3, and 61 Vict. c. 39(D), s. 3, and was fined \$20 and \$10.65 costs, and was adjudged in default of payment forthwith to be imprisoned in the common jail for 30 days. His discharge was applied for on the grounds; (1) That before a warrant for his imprisonment could issue and be executed a warrant of distress must be issued and returned, and (2) That the sum placed in the warrant for costs and charges of conveying defendant to goal, \$25, was excessive.

Held, 1. It was competent for the justice to issue the warrant for imprisonment in the first instance without resorting to distress and that it was not imperative in construing the statute (c. 39, s. 3, sub-s. 18), to read the word "may" as "must."

2. If excessive fees were charged the defendant's remedy was by action and he should not be discharged from goal on that ground.

A. A. Mackay, for the prisoner.

Full Court.]

BENT V. MORIN.

[Nov. 16.]

Absconding debtor—Affidavit for arrest—Form.

An affidavit for order for arrest which contains allegations setting out a good cause of action in respect to the amount for which the defendant is held to bail is sufficient even though it may be somewhat unusual in form.

Mellish, K.C., for appellant. O'Connor, for respondent.

Province of New Brunswick.

SUPREME COURT.

Full Court.]

THE KING V. KAY.

[Nov. 16.]

Canada Temperance Act—Fine exceeding \$50.00 for first offence.

This was an application to quash a conviction under the above Act on the ground that the fine was excessive, and beyond the power of the magistrate. The appellant had been fined \$200 for a first offence, under the C.T.A., which enacts that the fine for the first offence shall not be less than \$50.00.