

CLUTE, J.:— . . . It cannot be supposed that the legislature intended by increasing the penalty to give a clear slate in all cases where a first conviction had been made. The second offence, which calls for imprisonment, is the offence of selling liquor without a license after a previous conviction. There was a previous conviction for an offence against the Act.

Having regard to the nature of the amendment and to the intendment of the statute, as enacted by sec. 101, sub-sec. 6, I am of opinion that the offence for which the prisoner was convicted was a second offence within the statute, notwithstanding the amendment. I am unable to give effect to the objection. See the Interpretation Act, 1907, sec. 7, sub-sec. 46 (d).

The other points raised were disposed of adversely to the defendant on the argument.

Application dismissed.

DIVISIONAL COURT.

JANUARY 21ST, 1910.

FINDLAY v. STEVENS.

Building Contract—Penalty for Non-completion of Work by Certain Day—Contractor Delayed by Default of other Workmen—Work not Commenced until after Time for Completion—New Contract—Necessity for Proof of Damage by Delay.

Appeal by the plaintiff from the judgment of the County Court of Wentworth.

Action by a contractor against the executors of one Stevens, deceased, to recover a balance alleged to be due for slating and tiling a roof for the deceased. The defendants counterclaimed for damages, alleging that the work was not done according to the contract. Judgment was given for the plaintiff for \$117 with costs on the proper scale, and for the defendants on their counterclaim for \$227 and County Court costs, the two amounts to be set off pro tanto.

The appeal was heard by BOYD, C., MAGEE and LATCHFORD, JJ.

H. E. Rose, K.C., for the plaintiff.

S. F. Washington, K.C., for the defendant.

BOYD, C., delivering the judgment of the Court, first referred to the provisions of the contract, the most important clause being: "Should the contractor fail to finish the work at the time agreed