

in the county of Cumberland, convicted before the undersigned Alexander G. Mackenzie, stipendiary magistrate in and for the said town of Amherst, for that he, the said Alfred LeBlanc did, between the 31st day of October, A.D. 1908, and the 26th day of January, 1909, within the said town of Amherst, unlawfully sell intoxicating liquor, contrary to the provisions of the Canada Temperance Act then and now in force in and throughout the said county of Cumberland;

"And I adjudge for the said offence hereinbefore first charged and mentioned against the said Alfred LeBlanc, the same being his second offence against the provisions of the second part of the Canada Temperance Act then and now in force in and throughout the said county of Cumberland, that the said Alfred LeBlanc shall forfeit and pay as a penalty the sum of one hundred dollars, to be paid and applied according to law, and the further sum of \$9.80 to be paid to J. Henry Arthur of the said town, Scott Act inspector, the informant herein, for his costs in this behalf, the said several sums to be payable forthwith, and in default of immediate payment I further adjudge that the said Alfred LeBlanc be imprisoned in the common jail for the county of Cumberland at Amherst in the said county, for the period of sixty days, unless the said sums are sooner paid.

"Given under my hand and seal at Amherst in the county aforesaid the day and year first above written.

Alexander G. Mackenzie, L.S.,  
A stipendiary magistrate in and for  
the said town of Amherst in the  
county of Cumberland."

As will be seen the costs of conveyance to jail were not included in the warrant of commitment. It was argued that Van Tassel's Case (5 Can. C. C. 133), applied to section 872 (b) (now 739(b)) as well as 872 (a) (now 739 (a)) of the Code.

TOWNSHEND, C.J.:—I shall follow Van Tassel's case and order the prisoner's discharge.\*

\*EDITOR'S NOTE:—See *Rex v. Hines*, *post*, p. 149.