

Full Court.]

REX v. GAUL.

[March 8.

*Criminal Code, s. 55—Punishment of child by teacher.*

The Criminal Code, s. 55, authorizes parents, persons in the place of parent, school masters, etc., to use force by way of correction towards any child, etc., under his care "provided such force is reasonable under the circumstances," but by s. 58, "everyone by law authorized to use force is criminally responsible for any excess." Defendant, a teacher in one of the public schools of the city, was charged before the Stipendiary Magistrate of the city of Halifax for assaulting, beating and ill using J. O., one of the pupils under his care, and was acquitted on the ground that there was no evidence of malice on the part of defendant or of permanent injury to the child.

*Held, 1.* The only question properly before the Stipendiary Magistrate was whether the punishment was reasonable under the circumstances, or, in other words, whether there was excess.

2. There is no warrant in the Code for the test applied in the American case of *State v. Pendergrass*, 31 Am. Dec. 365, and adopted by the Stipendiary Magistrate that it is necessary for the prosecutor to prove either that the person inflicting the punishment was actuated by malice or that his act resulted in permanent injury to the child.

*W. A. Henry and R. T. Murray*, for appeal. *H. McInnes, K. C.*, contra.

Full Court.]

REX v. BIGELOW.

[March 8.

*Liquor License Act of 1886—Conviction as for third offence—Use of previous convictions to establish.*

Previous convictions may be used as evidence upon which to base a conviction for a third offence against the provisions of the Liquor License Act as often as such an offence is charged and proved.

It is not now necessary under the statute (s. 131) to ask the defendant whether he has been previously convicted unless he is present in person.

Where at the conclusion of each of several cases tried before him the magistrate decided to convict, but at the instance of defendant's counsel refrained from imposing sentence and drawing up the formal conviction until the County Court Judge should have decided a question raised on the trial as to the use of previous convictions.

*Held*, dismissing defendant's motion to quash and ordering a writ of procedendo, that the magistrate was not precluded from proceeding with the convictions at a later stage.

*J. A. Chisholm and H. V. Bigelow*, for motion to quash. *S. D. McLellan*, contra.