last affidavit by cross-examination thereon; and judgment should not have been entered against them without such opportunity.

It must not be forgotten that Rule 603 is applied only with caution and in a perfectly plain case.

We should, I think, avail ourselves of the powers given by sec. 54 of the County Courts Act; and, allowing the appeal with costs in the cause to the defendants, send the case back to the County Court Judge for his disposal after the defendants have had an opportunity of fully developing their defence.

FALCONBRIDGE, C.J.:—I agree in the result.

LATCHFORD, J.:—I agree.

CLUTE, J., IN CHAMBERS. JANUARY 21ST, 1910.

REX v. TEASDALE.

Liquor License Act—Conviction for Second Offence—Amendment of sec. 72 after First Conviction—Change in Penalty for First Offence—Effect of—Interpretation of Statutes.

Application by the defendant, on the return of a habeas corpus, for his discharge from custody under a warrant of commitment pursuant to a conviction for a second offence against the Liquor License Act.

The prisoner was first convicted on the 28th July, 1908.

On the 13th April, 1909, sec. 72 of the Act was amended by increasing the penalty for a first offence from not less than $50 besides costs and not more than $100 besides costs, to a sum of not less than $100 besides costs and not more than $200 besides costs. The punishment for a second offence (imprisonment for 4 months) was not changed by the amendment. The Act was not repealed, but the figures indicating the amount of the penalty were changed.

J. B. Mackenzie, for the defendant, contended that, an amendment having been made in the section by increasing the penalty for a first offence, there cannot be a second offence under the same section of the Act, where the prior offence pre-dated the amendment.

E. Bayly, K.C., for the Crown.