2. Nor state and shew that there was any by-law creating such an offence as is therein attempted to be stated.

3. There is no averment of the hours during which the bar-room was open, to show an offence within any such by-law.

4. Nothing on the face of the conviction to shew that the defendant was a person licensed to sell spirituous liquors, or in any way subject to the operation of such a law or by-law, if any.

5. There was no charge laid before the convicting Justices of any such offence.

6. No evidence before them of any such offence as therein attempted to be stated.

7. The penalty and costs imposed are not warranted by law;

And on other grounds stated in the papers filed.

And why the second conviction should not be quashed, with costs to be paid by the informer, upon the following grounds:

1. That it does not sufficiently state any offence.

2. The offence, if any, is not stated with sufficient certainty.

3. No sale by retail is shewn on the face of the conviction.

4. There was no evidence bofore the convicting Justices of any such offence as there attempted to be stated.

The rule was served on the informer on the 14th May, and on the convicting Justices on the 6th May, 1870.

During this term *Murphy* shewed cause. The recognizance rolls attached to each of the convictions purport to be taken on the fourth day of January in the *thirty-second* year of the reign of Her Majesty, whilst the convictions referred to therein were made in the 33rd year of the reign. The recognizance is therefore irregular, and the *certiorari* ought to be quashed as to both convictions.

As to the first conviction, it is admitted it cannot be sustained.

As to the second conviction, the Statute of Ontario, 32 Vic. ch. 32, sec. 1 enacts that no person shall sell by retail any spirituous, fermented, or other manufactured liquors within the Province, without first having obtained a license authorising him so to do. The defendant was convicted of the offence of selling wine, beer, and other spirituous or fermented liquors, to wit, one glass of whiskey, contrary to law. The conviction is sufficient and ought to be sustained. The objection to the recognizance ought to prevail: *Rex* v. *The Inhabitants of Abergele*, 5 A. & E. 795.

Harrison, Q C., contra. The conviction certified is sufficiently referred to in the roll. The date is mentioned, and the offence charged against the defendant is stated exactly as it is in the record of conviction. The mistake in the date of the recognizance roll can do no harm. At all events, the magistrates and informant cannot now take this objection, for they have returned the conviction. If they had desired to bring up the point, they should have taken the course suggested by the case referred to, and moved to quash the *certiorari*, and enlarged the return of the writ, to enable the defendant to amend the recognizance roll or to enter into a new one.

The first conviction is bad for not shewing or reciting any by-law against keeping a bar-room open, or that defendant kept a tavern, or was in any way liable to be fined. *Newman* v. *The Earl of Hardwicke*, 8 A. & E. 125, shews that when it is not permissible for keepers of ale and beer houses to keep open their houses for sale of liquors before 4 a.m. nor after 10 p. m., or permit the same to be drunk on their premises, yet in a conviction for permitting beer to be drunk and consumed on the premises at a time declared to be unlawful by the order of the Justices of the Peace, against the tenor of the license granted to the plaintiff, and contrary to the form of the Statute, the exact time ought to be stated, and that the magistrates made the order which it was alleged had been violated. Section 362 of the Municipal Act does not make the conviction good. See also R. & H. Dig. "Conviction," 4.

The second conviction is also defective. It does not allege that the defendant was convicted of any of the offences named in the Statute. The offence is charged in the alternative. It states he was adjudged guilty of selling wine, beer, and other spirituous or fermented liquors. If it had stopped here, it could not be said what offence the person named had been convicted of, whether selling wine or beer or other spirituous liquors, or other fermented liquors. The mere addition of "to wit, one glass of whiskey," cannot make the conviction certain and good in other respects. It does not say the sale was by retail. *Rex* v. *Morley*, 1 Y. & J. 221, is a strong authority that this conviction is bad. In that case the defendant was charged with importing or causing to be imported foreign silks. Judgment was arrested because it was uncertain which offence was charged, viz., importing the silks or causing them to be imported. Many authorities are referred to there, and the general doctrine is sustained, that informations or convictions must be certain, not in the alternative, and be so stated that if the defendant should be again prosecuted for any of the named offences he might plead the former conviction: *Regina* v. *Craig*, 21 U. C. Q. B. 552; *Rex* v. *Pain*, 7 D & R. 678; *Rex* v. *North*, 6 D & R 143; *Reid* v. *McWhinnie*, 27 U. C. Q B. 289. The evidence is returned with the conviction, and does not shew that the whiskey referred to was sold by retail by defendant, or sold by any one. See 32 Vic. ch. 32, sec. 1, (Ont.); 33 Vic. ch. 28, sec. 1, 2, (Ont). In the *Attorney-General* v. *Bailey*, 1 Ex. 281, it was held that sweet spirits of nitre were not "spirits" within the meaning of the English Excise Acts.

RICHARDS, C. J., delivered the judgment of the Court.

As to the conviction first referred to, the objection taken to the recognizance seems of little consequence. Many authorities lay it down that even in those cases where the statute enacts that no conviction under it shall be removed by *certiorari*, if the justice convict where there is no jurisdiction, the *certiorari* is not taken away.

In such a case, where the *certiorari* has been issued, and there has been some omission, the proper course seems to be to move to quash the writ or the allowance of it, and not to shew the defect as cause against quashing a bad conviction. When the objection is to some irregularity