

the defendant with selling intoxicating liquor without license on 2nd October, 1907. Notwithstanding this amendment, upon the making of which the defendant again pressed for an adjournment, representing that with the date thus fixed he could produce a witness who could give material evidence on his behalf, the magistrate refused to adjourn, and proceeded with the trial.

The evidence taken was sufficient to warrant a conviction for selling liquor without a license. The notes, however, as returned, disclose nothing in regard to any prior conviction. The magistrate makes affidavit that after he had found defendant guilty he asked him whether he had been previously convicted of a similar offence, to wit, on 30th March, 1907, and that the defendant then admitted that he had been previously so convicted. The magistrate adds that this admission was not reduced to writing, and was inadvertently omitted from the evidence. The defendant, however, says that "immediately after I gave my evidence, and before anything further was done by the magistrate, I was asked by . . . the magistrate if I had been previously convicted, no time being mentioned as to when I was convicted, and I denied having been formerly convicted, whereupon John D. Orr, license inspector for the county of Peel, was called as a witness and sworn, and some questions asked him, and I was then asked what I had to say to that, and I did not reply."

Mr. John Ayearst makes affidavit corroborating the magistrate as to the defendant having declined to accept an adjournment on payment of \$10 and as to his admission of a previous conviction. Except upon these two points, the affidavit of the defendant as to what took place before and during his trial is uncontradicted.

The information returned with the papers refers to the former conviction of the defendant as a conviction for having "unlawfully sold intoxicating liquor." The conviction returned refers to the former conviction as a conviction for having "unlawfully sold intoxicating liquor without the license therefor by law required."

Counsel for the Crown contended that the conviction returned being upon its face regular and sufficient, the Court should not, on a motion for discharge under habeas corpus, go behind the conviction and consider the sufficiency