

Scott, J.]

KING v. PLANTE.

[Dec. 30, 1903.

Liquor License Ordinance — Imprisonment — Hard labour — Conviction quashed—No power to amend—Magistrates' Ordinance—Interpretation.

The defendant was convicted under section 122 of the Liquor License Ordinance (C.O. 1898, c. 89) for supplying intoxicating liquor to an interdicted person, knowing the said person to be interdicted, and sentenced to pay a fine of \$50 and costs, and in default of payment to imprisonment for a term of two months with hard labour. Section 122 of the Ordinance provides that a person convicted of such an offence shall be liable to a penalty of not less than fifty dollars and not more than two hundred dollars, and in default of payment to not less than two months nor not more than twelve months imprisonment, no provision being made for imposing imprisonment with hard labour.

Held, on an application to quash, that imprisonment does not include imprisonment with hard labour, and in the absence of special provision imprisonment with hard labour cannot be imposed.

Held, also, that, upon application to quash, the Court has no power to amend convictions under a Territorial Ordinance, that the powers of amendment given by sections 883, &c., of the Criminal Code do not apply, the provisions of Part LVIII. being made applicable by the Magistrates' Ordinance (C.O. c. 32, s. 8 and c. 8 of 1900) to proceedings before justices of the peace and to proceedings upon appeal only. Conviction quashed.

C. F. Newell, for prosecutor. *Wilfrid Gariepy*, for defendant.

Province of British Columbia.

SUPREME COURT.

Hunter, C.J.]

HICKEY v. SCIUTTO.

[April 8, 1903.

Landlord and tenant—Lease of premises for hotel—Premises not fulfilling requirements of by-law—Illegal lease.

Action by lessor on covenants for rent and repair. Premises in Vancouver leased for use as an hotel did not fulfil the requirements of a by-law in regard to the number of bedrooms, and of this both the lessor and lessee were aware at the time the lease was entered into. The lessee was stopped by the authorities from using the premises as an hotel :—

Held, in an action by the lessor on covenants for rent and repair, that the lease was void ab initio and the maxim, *In pari delicto potior est conditio defendentis*, applied.