

## REPORTS AND NOTES OF CASES.

## Province of Ontario.

## HIGH COURT OF JUSTICE.

Middleton, J.]

REX v. COOTE.

[Sept. 10.

*Liquor License Act—Conviction for second offence in absence of defendant—Enquiry as to first offence—Statute, directory or imperative.*

Motion to discharge the defendant from custody on a return to a habeas corpus. The question was as to the power of the magistrate to proceed with the trial of the defendant in his absence, he being charged with an offence against the Liquor License Act, as a second offence. Reference was made to the Liquor License Act, s. 101; Crim. Code, ss. 718, 721; R.S.O. 1897, c. 90, s. 2; 10 Edw. VII. c. 37, s. 4.

*Held*, that the provisions of the Act requiring the trial of the subsequent offence to precede the inquiry as to the former conviction are imperative and not directory, has been determined in *Rex v. Nurse*, 7 O.L.R. 418, which overrules an earlier case of *Regina v. Brown*, 16 O.R. 51, in which Armour, C.J., had held the provisions to be directory only. This case accepts the reasoning of the court in Nova Scotia in *Rex v. Salter*, 20 N.S.R. 206, which determined that the provisions of the clause relating to the asking of the accused whether he admitted or denied the previous conviction were imperative. I can see no ground for distinguishing between the different provisions of this section, and holding some to be imperative and others directory, and, even if I am not technically bound by the decisions, I have no hesitation in accepting them. The Nova Scotia case is upon the precise question now before me, and determines that the magistrate has no power to convict of a second offence without bringing the defendant before him, so that the course pointed out by the section in question can be strictly followed. The view of the majority of the court in *Ex p. Grover*, 23 N.B.R. 38, 24 N.B.R. 57, does not commend itself to me. I cannot see why the bringing of the accused before the magistrate on a warrant before proceeding with the trial should be regarded as a "defeating of the ends of justice," or as practically preventing the making of a conviction for a second offence. On the other hand, to read into s. 101