

pint, without the license therefor by law required.

And I do further find that no by-law has ever been passed relative to shop or tavern licenses or otherwise by the Commissioners of Police of the City of Toronto, under section one hundred and forty-nine (149) of the Statute twenty-nine and thirty (29 & 30) Victoria, chapter fifty-one (51).

And I adjudge the said M. B. Faulkner, for his said offence, to forfeit and pay the sum of twenty dollars, to be paid and applied according to law, and also to pay to the said George Albert Mason the sum of two dollars and eighty-five cents for his costs in this behalf; and if the said several sums be not paid forthwith, I order that that the same be levied by distress and sale of the goods and chattels of the said M. B. Faulkner, and in default of sufficient distress, I adjudge the said M. B. Faulkner to be imprisoned in the common gaol, of the City of Toronto for the space of thirty days, unless the said several sums and all costs and charges of the said distress, and of the commitment and conveying of the said M. B. Faulkner to the said gaol, shall be sooner paid.

Given under my hand and seal the day and year first above mentioned, at the City of Toronto aforesaid.

(Signed,) A. McNABB,  
P. M. [L.S.]

*McMichael* shewed cause, and *Harrison* supported his rule, citing *Regina v. Lennon*, 26 U. C. Q. B. 41. The clauses of the Statute bearing on the on the question are cited in the judgment.

*Morrison, J.*, delivered the judgment of the court.

The Municipal Act of 1864 has altered the provisions of the law with respect to shop licenses, and with regard to penalties for selling intoxicating liquors without license. By the 249th section, a shop license is defined to be a license for the retail of liquors in quantities not less than one quart, while the latter part of the 254th section enacts, "but no person shall sell or barter intoxicating liquor of any kind, without the license therefor by law required, under a penalty of not less than \$20," &c. Neither of these provisions is to be found in the repealed municipal act.

It appears on the face of the conviction that the defendant received a shop license for the current year, and it further appears that he did sell at his shop spirituous liquors in less quantities than a quart, without the license therefor by law required.

It was contended, however, that notwithstanding the limitation in the 249th section, as to shopkeepers selling in quantities not less than a quart, that there were no express words in the statute making it an offence for a person holding a shop license to sell less than a quart, or for inflicting a penalty in the event of a shopkeeper doing so; and it was further contended that the defendant did not exceed the authority granted him by the license itself, as it did not restrict him to selling in any quantity.

As to the latter point, the license contains a proviso that the defendant should observe and keep all such laws, by-laws &c., as were then or might thereafter be lawfully in force in the city, in reference to shop licenses, and to shopkeepers, and in respect to the keeping or selling of any such liquors. By the statute it is provided that a shop license can only be granted to sell liquors

in quantities not less than a quart. It can hardly be said that this is not one of the laws which his license provides he should observe and keep. It is not pretended that the defendant had a tavern license, the only license that could authorize him to sell in so small a quantity as a pint, so that in fact he was doing that which neither the law nor his license authorized him to do.

The question we have now to determine, however, is whether selling intoxicating liquors under the circumstances charged against this defendant is an offence, and is punishable under the provisions of sec. 254, and we are of opinion that it is. We may assume that the Legislature had some object in amending the law and restricting a licensed shopkeeper to selling in quantities of a quart and upwards, with a view to revenue or to remedy some defect in the previous law. We take it that when a statute, as in the present instance, defines what a shop license is, and the authority it gives, if it would be an offence or infraction of law for a shopkeeper to sell without any license whatever, it would be no less an offence for him, having such a license, to sell contrary to it, and beyond the authorized limit; or, to put it in another light, if the Legislature by the municipal act had so amended the law as to declare that no shop license should be granted, and that it would be lawful for shopkeepers to sell intoxicating liquors in quantities of a quart and upwards, it would hardly be contended that the selling in less quantities without a license would not be an offence punishable under the provisions of the 254th section. As well might it be argued that because under sec. 252 no tavern or shop license shall be necessary for selling any liquors in the original packages, provided they contain not less than five gallons or one dozen bottles, that it would not be an offence to sell packages containing one gallon or half-a-dozen bottles.

We are, therefore, of opinion that the defendant was properly convicted, and that the rule be discharged with costs.

*Rule discharged*

## COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, Esq., Barrister-at-Law,  
Reporter in Practice Court and Chambers.)

RE DAVIDSON.

*Insolvent act—Allowance of appeal—Notice—Amendment.*

An application of an insolvent for a discharge was dismissed by the County Judge on 16th September. On the 23rd September the insolvent gave notice of an intended application on the 24th September to a judge at Osgoode Hall, for leave to appeal. *Held* that this notice was clearly insufficient, but on the authority of *Re Owen*, 12 Grant. 446, and in favor of the liberty of a subject, the notice was amended.

*Quere* as to the materials that should be before the judge on such an application.

[Chambers, Sept. 30, 1867.]

The Judge of the County Court of the County of Wentworth, on the 16th day of September last, made an order discharging the insolvent's application to be relieved from custody on a warrant for his arrest for contempt in not obeying an order of the judge.

Notice of appeal was served on the 20th of September, to the effect that an application would be made to a judge of one of the Superior Courts of Common Law at Osgoode Hall, on the 23rd