

*Held*, 1. In the absence of evidence to rebut the presumption that the second statement was made under the operation of the same influence as the former one the trial judge erred in receiving evidence of it, and the defendant, who had been convicted, was entitled to a new trial.

2. The burden of shewing that the influences under which the first statement was made had been dispelled when the second statement was obtained rested upon the Crown.

3. The prisoner's counsel who was present when the second statement was made could not assent to or waive anything to the prisoner's prejudice, and that in a case where the prisoner herself could not make a waiver or admission such waiver or admission could not be made through the agency of her counsel.

*R. G. Monroe*, for prisoner. *Drysdale*, K.C., Attorney-General, for Crown.

Full Court.] THE KING v. BLANK. [Dec. 18, 1905.

*Intoxicating liquor—Offence against Act—Form of conviction—Imprisonment in default of payment.*

Defendant was convicted before the Stipendiary Magistrate for Sydney, for a first offence against the second part of the Canada Temperance Act, and it was ordered that defendant in default of payment of the fine and costs in the conviction mentioned should be imprisoned in the common gaol of the county of Cape Breton for three months, unless the sums in conviction mentioned were sooner paid. The Court being moved to quash the conviction,

*Held*, dismissing the application with costs, that the case was concluded by *The Queen v. Horton*, 31 N.S.R. 217; 3 Can. Cr. Cas. 84.

Per GRAHAM, E.J. (delivering the judgment of the Court):—That case was a conviction under s. 501 of the Code and there as here there was provided a pecuniary penalty or a term of imprisonment, and it was held that the term of imprisonment was imposed by way of punishment and not as a term of imprisonment inflicted in default of payment of the penalty, and recourse was to be made to s. 872, for the term of imprisonment.

*Maddin*, in support of application. *H. Ross*, contra.