

likewise before the warrant of commitment issued. Not having done so, from the evidence before me, I am of the opinion that this ground taken by the prisoner's counsel is sustained.

The second ground is also properly taken. I do not think that the curative provisions of section 147 Canada Temperance Act empowers me to go beyond amending a defective warrant, defective as to not following the adjudication. The defect in the warrant herein is not of this character. It is an omission in not alleging non-payment "of the said several sums or any part thereof." The defendant may, in the meantime, have paid the fine. A fresh warrant might have been issued on discovering the defect, without application.

"If a warrant of commitment is defective or informal it cannot be recalled, withdrawn or altered. It cannot be amended like the information; but if there is any error in it, a fresh commitment may be lodged with the governor of the prison upon which the defendant may be detained:" Paley on Convictions, 7th ed., p. 271, citing *ex parte Smith*, 27 L. J. M. C. 186; in *re Cross*, 26 L. J. M. C. 28.

If the conviction had not been attacked on the ground thirdly taken, I would not quash the conviction, upon which the convicting magistrate could issue a fresh warrant, and lodge the same with the jailer who could hold the prisoner under such warrant. But I have no right on this motion to entertain an application to amend the warrant returned as the warrant under which the prisoner is detained in jail.

The ground thirdly taken by the prisoner's counsel must be sustained and the conviction herein quashed. In *Rex v. Lorimer*, decided last June (see *ante*, p. 117) Russell, J., holds that, in order to obtain a conviction under the Canada Temperance Act it must be shewn that the Act is in force; and in order to shew this it must be shewn that there were no licenses in force in the county at the date of the proclamation. The learned Judge follows the decision of Lawrence, J., in *R. v. Wallace*, lately decided on this point. The convicting magistrate has returned the evidence upon which the prisoner was convicted. It appears that there was no proof before him of the second part of the Canada