having on the 11th June, 1908, at the village of Colborne, in the county of Northumberland, unlawfully sold liquor without the license therefor by law required. The prisoner, after having been made aware of that allegation, should have been asked, in substance, at least, with some regard to the requirement of the statute, whether he was previously convicted as so alleged, or not. If, upon this inquiry being made, the prisoner had answered that he was so previously convicted, he could have been sentenced. Had the prisoner denied or had he not answered directly, proof of the previous conviction would have been required.

The record does not shew that the statutory procedure was complied with.

The police magistrate says, in his minute of conviction, that subsequently, and on the same 11th December, 1909, the defendant pleaded guilty upon a charge of having been previously convicted at the 28th July, 1908, of having on the 11th June, 1908, at the village of Colborne, in the county of Northumberland, sold liquor without the license therefor by law required. The place of conviction is not stated, nor is the name of the convicting magistrate, although both are in the information. Then the police magistrate, no doubt acting in perfect faith, and intending to comply with the law, puts the previous conviction in the form of a charge against the prisoner. He is charged with having been previously convicted, and to this charge it is alleged that the prisoner pleaded guilty. It could not be put in the form of a charge. It is not an offence to have been convicted of an offence . . Putting the matter in this form is conclusive evidence to me that the police magistrate did not, in fact, comply with the statute, and it may be a matter of regret that the prisoner, if, in fact, guilty of the previous offence, and subsequent offence of selling liquor without license should escape without the full punishment to which he was sentenced; yet that cannot be avoided. It is important that, before imprisonment, guilt should be established, and that the conviction should be in due form of law. I do not give effect to any of the many objections taken by prisoner's counsel.

My decision is that s. 101 of c. 245, was not, in form or substance, complied with . . .

Reference to *Rex* v. *Brisbois*, 15 O.L.R. 264; *Regina* v. *Fee*, 13 O.R. 590.

Order will go for discharge of prisoner. No costs.

LATCHFORD, J., concurred, stating his reasons briefly in writing.