

The appeal was heard by BRITTON, LATCHFORD, and SUTHERLAND, JJ.

BRITTON, J.:—The main objection relied upon before my brother CLUTE was that no conviction for a second offence could be made because of the amendment of s. 72 of the Liquor License Act after the alleged first conviction and before the second conviction. Upon that objection judgment was reserved, and all other objections were upon the argument disallowed. I do not know what the specific objections raised, and so disposed of on the argument, were, but as to the one reserved and afterwards decided as reported, I may say that I wholly agree with the learned judge.

The Crown took as a preliminary objection that there is no appeal: (1) No appeal under the Habeas Corpus Act, as here, to a Divisional Court; although the writ of habeas corpus could have been made returnable before a Divisional Court or before a single judge, in either case the appeal is only to the Court of Appeal; (2) no appeal because of the provisions in the Liquor License Act in regard to appeals, c. 245, ss. 118, 121, R.S.O.

Neither Act in terms prevents such an appeal as is now taken, from a judge in the ordinary course to a Divisional Court. Unless there is a prohibition in terms or by necessary implication, there is no reason why the case is not covered by rule 777. The judgment pronounced by Mr. Justice CLUTE, if it stands, finally disposed of the matter.

Under the Liquor License Act (s. 121) the appeal will lie to the Court of Appeal from a judgment of the High Court or a judge thereof, "but no such appeal" (i.e., appeal to the Court of Appeal) "shall lie from the judgment of a single judge or from the judgment of the court if the court is unanimous, unless in either case the Attorney-General for Ontario certifies," etc. That seems to imply that a party may as of right and in the ordinary case go from a single judge to a Divisional Court: *Re v. Lowery*, 15 O.L.R. 182.

I am of opinion that the Divisional Court has jurisdiction, and so the objections must be considered.

Assume that the offence charged as of the 3rd November, 1909, was approved, and that the prisoner was found guilty, then, and not before, the prisoner should have been asked "whether he was previously convicted, as alleged in the information."

The allegation in the information is that the prisoner was on the 28th July, 1908, at the town of Cobourg, before the police magistrate in and for the town of Cobourg, duly convicted of