

TEETZEL, J., IN CHAMBERS.

JULY 26TH, 1911.

REX v. WHITNEY.

*Liquor License Act—Conviction for Selling without License—
Evidence to Support—Information—Form of—Informant
or Witness not Examined on Oath—Information and Belief
—Costs of Conveying to Gaol not Provided for—Secs. 72
and 89 of Act—Imprisonment at Hard Labour—Power to
Impose.*

Motion to quash a conviction under sec. 72 of the Liquor License Act, whereby the defendant was convicted of selling liquor without a license and adjudged to pay a fine of \$100 and \$4.75 costs.

J. B. Mackenzie, for the defendant.

J. R. Cartwright, K.C., for the Crown.

TEETZEL, J.:—The conviction ends with these words: “And if the said several sums be not paid forthwith, we adjudge the said Harry Whitney to be imprisoned in the common gaol of the united counties at Cobourg,” etc., “and there to be kept at hard labour for the space of three months, unless the said sums shall be sooner paid.”

There was abundant evidence, if believed, to warrant conviction.

The objections relied on and not disposed of on the argument are:—

(1) That neither the informant nor any other witness who might support the charge was examined on oath by the convicting magistrate, before the summons to the defendant was issued.

(2) That the costs of “conveying to prison” are not mentioned or provided for in the conviction.

(3) That imprisonment at hard labour forthwith in default of payment is unwarranted.

Since the argument, a similar objection to the first has been disposed of in *Rex v. Mitchell*, ante 1408, which was also a case under the Liquor License Act, and in which it was held that, notwithstanding the Dominion Act 9 Edw. VII. ch. 9, amending sec. 655 of the Criminal Code, a Justice of the Peace is quite justified, when the allegations of the complainant are such as to convince him of the propriety of issuing a summons on information on the oath of the complainant, in issuing the summons; and