

In this case the defendant was accused of a second offence against the Liquor License Act. Section 101 of that Act provides that in such a case the Justice shall in the first instance inquire concerning the subsequent offence only, and, if the accused be found guilty thereof, he shall then be asked whether he was so previously convicted, but, if he stands mute of malice, or does not answer directly to such question, the Justice shall then inquire concerning the previous conviction or convictions.

In my opinion, the two statutes should be read together, and I think effect can be given to both. The second on its face provides only for the case where the accused is present; the Criminal Code expressly provides that, if the accused is not present, after being duly summoned, the Justice may proceed with the case as fully and effectually, to all intents and purposes, as if the defendant had personally appeared, or, if he thinks fit, he may issue his warrant and bring the accused before him.

In this case the magistrate exercised the discretion which the statute gave him, and I do not think we have any right to review his action.

The provincial Act provides that the Dominion statute is to apply unless in any Act hereafter passed it is otherwise declared. Here we are not dealing with an Act "hereafter passed," nor is it "otherwise declared," so we have neither of the conditions required by the Act.

The case of *Rex v. Nurse*, 7 O. L. R. 418, relied on, is, in my opinion, not in point. There the conviction was quashed because the magistrate took evidence as to previous convictions before deciding whether the subsequent offence was proved or not, and there was then in the section a clause prohibiting such a course, as it stated that it was only after the accused had been found guilty of the subsequent offence "and not before" that the inquiry as to previous convictions should be entered upon. The words "and not before" have since that decision been struck out by the legislature. The same remark applies to the Nova Scotia case, *Regina v. Salter*, 20 N. S. R. 206. In both these cases the magistrates adopted a course expressly prohibited by the statutes there construed; in the statutes applicable to this case there is no such prohibition; and, in my opinion, the procedure is quite in harmony with them.

Further, if one looks at the object of the provision in question, this view is very much strengthened. Its object may be said to be twofold; first, to provide against the premature admission of evidence that would be illegal at that stage and would be certain to prejudice the accused; second, to ask the accused at