of the Ontario Temperance Act, as for a first offence. Upon the application of the County Crown Attorney, the Justices permitted the charge to be withdrawn, apparently in order that a new charge might be laid as for a second offence. When the charge was withdrawn, the accused left the Court, and it was subsequently arranged between Mr. B., the defendant's counsel, and the County Crown Attorney that, if a new charge was laid, Mr. B. "would try and arrange to take the matter up on the 15th July." A new information was laid on the 10th July and a summons issued to the defendant, returnable on the 15th July at Madoc. This was given, on the 10th July, to a constable to serve, and on the 13th the constable served it by leaving it with the defendant's wife at his house in Madoc, the defendant himself being then absent.

There was no evidence to shew that the constable made any effort to find the defendant or to learn whether or not the summons served on the wife would come to the defendant's notice in time for the 15th. The County Crown Attorney communicated with Mr. B. by telephone, and they went together to Madoc on the 15th. When the case was called, the defendant did not appear, but Mr. B. did not ask for an adjournment on that ground, believing that the defendant would appear before the proceedings were concluded. The constable testified to the service of the summons upon the wife of the defendant, whereupon Mr. B. objected that the service had not been legal; but the Justices proceeded with the trial, and Mr. B. remained and cross-examined two of the Crown's witnesses, "subject to objection," meaning his objection to being obliged to proceed.

At the close of the proceedings, the Justices formally "adjourned for adjudication" until the 19th July, and on the 19th July adjourned again until the 22nd July, on which day they found the defendant guilty, and, proof of a conviction for a previous offence being given, they found him guilty of a second offence, and sentenced him to 6 months' imprisonment.

If the regularity of the conviction depended upon the proof of service of the summons, it would be difficult to support it: see sec. 658 of the Criminal Code: there was no evidence that the defendant could not "conveniently be met with;" and the defendant, by affidavit, denied, that the summons had come to his knowledge before the conviction.

But it was contended that the appearance by Mr. B. as counsel for the defendant at the hearing on the 15th July was a waiver of any irregularity in the service of the summons: Regina v. Doherty (1899), 3 Can. Crim. Cas. 505.

The learned Judge gave effect to this contention. On the evidence, Mr. B. had ample authority and instructions. The defendant did not repudiate Mr. B.'s authority to appear, and Mr. B. merely