

NOVEMBER 12TH, 1910.

*REX v. COOTE.

Liquor License Act—Conviction for Second Offence in Absence of Defendant—Inquiry as to First Offence—Construction of sec. 101—R. S. O. 1897 ch. 90, sec. 2—Criminal Code, sec. 718.

Appeal by the Crown, under sec. 121 of the Liquor License Act, from the order of MIDDLETON, J., in Chambers, ante 6, upon the return to a habeas corpus and certiorari in aid, discharging the defendant from custody under a warrant of commitment pursuant to a conviction for a second offence against the Act.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

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

J. Haverson, K.C., for the defendant.

MACLAREN, J.A.:—The proceedings in question on this appeal took place under R. S. O. 1897 ch. 90, sec. 2, as the new statute, 10 Edw. VII. ch. 37, had not come into force at the time of the trial. This section (2 of ch. 90) provides that "where a penalty or punishment is imposed under the authority of any statute of the province of Ontario . . . and is recoverable before a Justice of the Peace . . . the like proceedings and no other shall and may be had . . . for hearing the complaint and for the conduct of the Court . . . as, under the statutes of the Dominion of Canada then in force, might be had and should be performed, if the penalty or punishment had been imposed by a statute of Canada, unless in any Act hereafter passed imposing the penalty or punishment it is otherwise declared."

The Dominion statute in force was sec. 718 of the Criminal Code, which provides that where, as here, the accused does not appear at the time appointed by the summons, "the Justice may proceed ex parte to hear and determine the case in the absence of the defendant, as fully and effectually, to all intents and purposes, as if the defendant had personally appeared," or, if he thinks fit, may issue his warrant and adjourn the hearing.

* This case will be reported in the Ontario Law Reports.