

Per DRYSDALE, J., the case was not one for amendment. RUSSELL, J., dissented as to the effect of the evidence.

J. J. Ritchie, K.C., and R. H. Murray, for appeal. W. H. Thompson, contra.

Longley, J.]

THE KING v. NEILY.

[Feb. 17.

*Intoxicating liquors—Third offence—Certiorari refused.*

On application for a writ of certiorari to remove a conviction for a third offence against the provisions of the Canada Temperance Act.

*Held*, refusing the application:

1. There is no substantial variation between a conviction which adjudges as a penalty imprisonment for two months and a warrant of commitment which directs the imprisonment of the party convicted for the period of two calendar months. If otherwise, the matter is clearly one for amendment, the period mentioned being clearly within the term for which imprisonment may be imposed.

2. Where the defendant has full opportunity of combating the validity of the previous convictions when the certificates are offered in evidence against him and fails to do so the court will not go behind the face of the proceedings as to the question of jurisdiction.

3. Following *R. v. Neilson*, unreported, s. 655 of the Code as amended by Acts of 1909, c. 9, is only applicable to charges of indictable offences under the Code s. 750 and is not applicable to proceedings under the Summary Convictions Act.

W. B. A. Ritchie, K.C., for applicant. Roscoe, K.C., contra.

Longley, J.]

[Feb. 17.

BRAS D'OR LIME CO. v. DOMINION IRON & STEEL CO.

*Waters and watercourses—Riparian proprietors—Easement—Revocation—Blasting operations.*

An interest in the waters of a stream cannot be conveyed to the detriment of bona fide riparian proprietors even though the riparian title be subsequently obtained.

The permanent withdrawal by one proprietor from the waters of a stream of a considerable quantity of water for use in connection with the operation of its works is an illegal act