

can be committed until after there has been a conviction for a first offence. Counsel for the Crown concedes that if a conviction for a first offence must precede the commission of the offence charged as a subsequent offence, the defendant must be released, but he contends that it is sufficient to warrant the increased penalty as for the second offence if it is committed after information laid for the first, and he lays his emphasis on sub-sec. 2 of sec. 143 (ch. 152 R. S.) which says that the increased penalty . . . shall only be recoverable . . . in the case of offences committed on different days and after information laid (not conviction adjudged) for a first offence. But it is to be observed that the section speaks of a previous conviction having been charged, which must mean charged in the information, and outlines the procedure for ascertaining whether he has been "so previously convicted." When we turn to the forms we find that in an information for a second or third offence we are to add the appropriate clauses from forms U and V, in which there are no appropriate clauses other than those which allege a previous conviction. I infer that it is meant that the informant who is proceeding as for a second offence must in his information allege a previous conviction and not merely a previous offence or a previous information for an offence. Section 128, which enacts the penalty for the subsequent offence, points the same way, although not with the same certainty.

This opinion is in accordance with the principle cited by Landry, J., from Crankshaw's Criminal Law, in the case of *ex parte McCoy*, 7 Can. C. C. 485, and with the views expressed by Landry, J., in that case concurred in by Hanington, J. Gregory and Barker, JJ., did not dissent from this view, but were not required to go so far as Landry, J., because there had not been even an information laid for the prior offences. McLeod, J., did dissent, but his views were not endorsed by Gregory, J., with whom Barker, J., agreed. The authority of Dorien, C.J., as cited in the passage already referred to in Crankshaw, is to the same effect. I therefore think that the conviction is bad and that the defendant must be released.