

**NOVA SCOTIA.**

SUPREME COURT (CROWN SIDE). SEPTEMBER 10TH, 1909.

REX v. WALKER.

*Liquor License Act—Second Offence—Imprisonment—Irregularity in Conviction—Release.*

Donald McLennan, for prisoner.

J. D. Matheson, for the Crown.

A. MACGILLIVRAY, CO. C.J., MASTER:—On the 29th of June, 1909, an order was granted on application of counsel for the prisoner, and upon sufficient cause shewn whether or not the defendant is detained in jail, with the day and cause of his having been taken and detained, as provided by sec. 3 (2) of chap. 181 R. S. N. S. 1900, "of Securing the Liberty of the Subject."

The prisoner was taken and detained on a warrant of commitment on a conviction for a second offence against the provisions of the Liquor License Act, then in force in the county of Inverness, and was adjudged to pay a fine of \$80 and costs, and for non-payment thereof imprisonment in the common jail with hard labour for the space of ninety days.

The convicting magistrate, in obedience to an order in that behalf, returned the proceedings in the trial of the complaint the information, evidence and conviction and further the information and conviction in the first offence.

On the return of the papers so ordered, counsel for the prisoner on the day fixed for the hearing of the application, after taking the ground, amongst others, that the prisoner is illegally convicted because the conviction on the second offence was made subsequent to the date laid for the offence for which he had been first convicted, produced certificates from two medical practitioners to the effect that the prisoner is suffering from chronic inflammation of the hip; and that if he should be confined in jail for the above period such confinement would materially affect his health, particularly as a consequence of want of proper nursing which the defendant daily requires. I did not think that this would be a sufficient ground for his discharge from jail,