

# SUPREME COURT OF CANADA.

---

## ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

---

SIMON FRASER, Appellant.

vs.

SILAS R. TUPPER, Respondent.

---

### IN THE MATTER OF SIMON FRASER'S APPLICATION FOR HIS DISCHARGE FROM CUSTODY.

The Appellant, Simon Fraser, was committed to gaol under the two warrants or executions, set out on page 7 of the printed Case. These warrants were issued by virtue of the two convictions set out in pages 11 and 12 of the Case. The proceedings attacked were taken in the Town Court of Truro, over which Mr. Frederick A. Lawrence, Stipendiary Magistrate of the Town of Truro, presides. 10

The Appellant will contend that he was illegally detained in prison,—

I. Because the Town Court of Truro, in which court the proceedings attacked were instituted, had no jurisdiction to try offences under chapter 75 of the Revised Statutes, "Of Licenses for the sale of Intoxicating Liquors," where the penalty under the statute is fine, and imprisonment in case of non-payment.

The Town of Truro was incorporated under Cap. 47 of the Acts of the Nova Scotia Parliament of 1875. No court was created by that Act; but under section 37, the Town Council had power to "make all rules necessary for the creating, and for the conduct, management, and regulation of the police and Municipal Court of the Town." Shortly after the incorporation of the Town, the Council passed a number of by-laws, and among others, those printed in the Case (pages 12-14), all of which were approved by the Governor in Council on the 3d August, 1875. It will be contended that these by-laws, as far as they purport to give jurisdiction to the Municipal Court, were *ultra vires*; but in any case they do not affect these proceedings, for in the 20