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MANITOBA LAW REPORTS.

VOLUME III.

REG. v. BRYANT.

Selling liquor without license.—Onus of proof.

1. The prosecution need not prove the absence of a license. The onus is on the prisoner to prove its existence.
2. A commitment must agree substantially with the conviction. Formal variances are not fatal. Thus where the defect in the conviction was in reciting that the defendant was adjudged to pay a fine, and in default to be imprisoned and kept at *hard labor* (hard labour not having been awarded), but the operative part made no reference to hard labor, *Held*, To be unobjectionable upon *habeas corpus*.
3. A conviction adjudged imprisonment in default of payment of the fine and costs "and charges of conveying her to the common gaol, amounting to the further sum of ———dollars." *Held*, Invalid, and the prisoner was discharged.

C. Glass for prosecution.

H. J. Clarke, Q. C., for defendant.

[4th April, 1885.]

DUBUC, J.—The defendant was convicted of selling intoxicating liquor without license, under the Con. Stat. Man., c. 8, s. 44, and is imprisoned in the common gaol of the Eastern Judicial District for not paying the fine and costs adjudged to be paid by said conviction.

She is now brought before me under a writ of *habeas corpus*; and several objections are taken to the warrant of commitment, and to the conviction—the said conviction evidence and other papers having been returned under a writ of *certiorari*.

The conviction appears to be correct in form; but it is contended that the evidence is not sufficient to justify and support it.

The first ground taken is that the prosecution has failed to prove that the defendant had no license. The only evidence is certain admissions made by the defendant and her husband some time previous to the laying of the information.