charge then before him, contrary to the provisions of sec. 101 of the Liquor License Act.

W. J. Tremeear, for the prisoner.

J. R. Cartwright, K.C., and McGregor Young, for the Crown.

The judgment of the Court (Moss, C.J.O., Osler, Maclennan, Garrow, Maclaren, JJ.A.) was delivered by

Osler, J.A.—All the objections urged against the proceedings fail. The second deposition of Chief Constable Jarvis shews that the magistrate had already adjudicated upon the charge laid in the information then before him before entering upon the inquiry as to the fact of the previous conviction. The affidavits from which it was argued that he had probably not done so are too vague and indefinite to warrant an assumption to the contrary of the deposition; but the amended conviction, though carelessly prepared and not following accurately the form given in the schedule to the Act, may be upheld, although it states the previous conviction as if the magistrate had then adjudicated and made it, instead of stating it as a fact found upon inquiry after conviction on the charge then before him. If necessary, the conviction may be amended upon the evidence: 1 Edw. VII. ch. 13 (O.); Criminal Code, secs. 889, 896. Under these circumstances, a defect in the warrant of commitment will not aid the prisoner: In re Shuttleworth, 9 Q. B. 650, 658: though it might be different if the conviction were not before the Court, and nothing appeared to support the detention but a defective warrant: In re Timson, L. R. 5 Ex. 257. But in form there is no substantial objection even to the first warrant of commitment. It follows with reasonable fidelity the form schedule L. of the Act, and avoids, as also does the conviction, the mistake the draftsman has fallen into of attaching a punishment of 3 months' imprisonment, instead of 4, to a second offence.

There is nothing in the objection that the arrest was made in the county of Ontario without the warrant having been backed by a justice of that county. The warrant of commitment is sufficient to justify the prisoner's detention in the gaol of the proper county, and the Court will not, on habeas corpus, inquire into any irregularity in his caption. The distinction in this respect between the practice in criminal and civil cases has been settled too long and too firmly to admit of the point being now debated: Rex v. Marks, 3 East