

But that is not sufficient to sustain the conviction; it is of the essence of the offence that it should be committed "in the presence of one or more persons;" and this is not satisfied by holding that the man who participates in the offence is "a person" contemplated by the statute. It is enough that one person should be shewn to be present, but it must be a person other than those engaged in the offence.

Order made quashing the conviction, without costs, and with protection to the magistrate and others.

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MIDDLETON, J., IN CHAMBERS.

JANUARY 8TH, 1916.

REX v. GERALD.

*Criminal Law — Indecent Act — Public Place — Criminal Code, sec. 205—"Wilfully"—Amendment of Information—Plea of "Guilty" after some Evidence Taken—"In the Presence of one or more Persons."*

Motion by Genevieve Gerald to quash her conviction by the Police Magistrate for the City of Toronto for an offence similar to that in *Rex v. Clifford*, ante.

T. C. Robinette, K.C., for the applicant.

Edward Bayly, K.C., for the Crown.

MIDDLETON, J., said that this case differed from *Rex v. Clifford* in that, after some evidence had been given, the applicant pleaded "guilty." The information was defective in that the word "wilfully" was omitted. Had the plea been to the information before evidence was taken, the conviction must have been quashed, for an amendment could not be made; but the evidence taken justified an amendment which would uphold the conviction. The applicant, having pleaded "guilty," could not now set up that the offence was not committed in a public place nor that it was not in the presence of one or more persons. This was alleged in the information, and the plea of "guilty" admitted that which was charged, and brought the case within the words of the statute.

*Motion dismissed with costs.*