

and "solicit" could be properly applied; and that sec. 42 did not apply to such a transaction. But this was a motion to quash a conviction—not an appeal—and the findings of fact of the magistrate were not open to review. It must be held that the magistrate had necessarily by implication found as a fact that the defendant did receive an order, and that the magistrate did not credit the evidence of the defendant that the transaction was fortuitous, friendly, and non-commercial; and that, consequently, the receipt of the order came plainly within the statute.

Reference to *Rex v. Toyne* (1916), 38 O.L.R. 224, 226.

The two findings of fact which, as a result of the conviction, must have been made by the magistrate, precluded the defendant from arriving on this motion at a point where he could effectively raise his contention as to the true interpretation of the statute, viz., that it included only business transactions and related exclusively to the receiving of orders of a commercial nature.

The cases of *Rex v. Berry* (1916), 38 O.L.R. 177, *Rex v. Cantin* and *Rex v. Weber* (1917), 11 O.W.N. 435, differed from the present case because the Ontario Temperance Act does not itself contain any provision corresponding to sec. 148 of the Canada Temperance Act, by which the right to certiorari is taken away. Section 72 of the former Act imports into that Act the provisions of the Ontario Summary Convictions Act, R.S.O. 1914 ch. 90; but sec. 10 of that Act seems to be excluded by sec. 92 (1) of the Ontario Temperance Act. There is in the present case, therefore, no statutory prohibition against certiorari; and the principle to be acted upon is found in *Regina v. Coulson* (1896), 27 O.R. 59, and *Rex v. Borin* (1913), 29 O.L.R. 584.

Following these cases, the evidence may be examined in order to ascertain whether the magistrate had jurisdiction. It being found that he had jurisdiction, and had by implication found the facts which would support the conviction, the result was the same as though the principle established by *Regina v. Wallace* (1883), 4 O.R. 127, *Rex v. Berry*, and *Rex v. Cantin* and *Rex v. Weber*, applied.

Motion refused, but, because of the difficulty of the question and the case being near the border-line, without costs.