

before the magistrate to warrant the conviction, and he therefore acted without jurisdiction.

L. E. Dancey, for the defendant.

J. R. Cartwright, K.C., for the Attorney-General.

LATCHFORD, J., in a written judgment, said that the contention on behalf of the Attorney-General was, that, as the right to certiorari and to an appeal were taken away by sec. 148 of the Canada Temperance Act, the evidence could not be looked at to determine whether or not it was sufficient to warrant the conviction. In *Regina v. Wallace* (1883), 4 O.R. 127, the Queen's Bench Division had under consideration sec. 111 of the Canada Temperance Act of 1878. Section 148 of the present Act is almost the same as sec. 111 of the former Act, sec. 148 being wider in its application. The *Wallace* case is a decision on the very question arising in this case, and should be followed. Jurisdiction to enter into the inquiry existed in the magistrate. There was no allegation that his jurisdiction was ousted by any claim made on reasonable grounds during the trial. If he erred in his appreciation of the testimony adduced, and found the accused guilty without evidence of guilt, his action implied not want of jurisdiction, but an improper exercise of it; and that was, by the statute, as interpreted by the *Wallace* case, not open to review upon such an application as the present.

Reference also to *Rex v. Carter* (1916), 26 Can. Crim. Cas. 51; *Colonial Bank of Australasia v. Willan* (1874), L.R. 5 P.C. 417, 442; *Ex p. Hackett* (1882), 21 N.B.R. 513; *Regina v. Cunnerty* (1894), 26 O.R. 51; *Regina v. Coulson* (1893), 24 O.R. 246, 249; *Regina v. Coulson* (1896), 27 O.R. 59; *Rex v. Cook* (1908), 18 O.L.R. 415, 419; *Rex v. Borin* (1913), 29 O.L.R. 584; *Rex v. McPherson* (1915), 25 Can. Crim. Cas. 62; *In re Trepanier* (1885), 12 S.C.R. 111, 129.

*Motion dismissed with costs.*