

KELLY, J., IN CHAMBERS.

FEBRUARY 21ST, 1916.

*REX v. HURLEY.

Liquor License Act—Magistrate's Conviction of Unlicensed Person for Keeping Intoxicating Liquor for Sale—Proof of Intoxicating Nature of Liquor—Certificate of Government Analyst—Production by Chief Constable of City—"Inspector or any Officer of the Crown"—R.S.O. 1914 ch. 215, sec. 106.

Motion to quash the conviction of the defendant by the Deputy Police Magistrate for the City of Stratford for having, on the 19th December, 1915, kept intoxicating liquors for sale without a license therefor, in violation of the Liquor License Act, R.S.O. 1914 ch. 215.

F. R. Blewett, K.C., for the defendant.

J. R. Cartwright, K.C., for the Crown.

KELLY, J., read a judgment in which he said that the defendant was the keeper of a restaurant in the city of Stratford. On the evening of the 19th December, the Chief Constable for the city and one of his officers entered the premises, and seized a bottle from which a man named Mallion was drinking. Only a portion of the contents had been taken from the bottle. The Chief Constable swore that he sent the bottle to the Government analyst at Toronto on the 21st December, and on the 23rd received the analyst's certificate, which was produced at the hearing, that in the contents of the bottle there was $7\frac{31}{100}$ per cent. of proof spirits. By sec. 2 (i) of the Liquor License Act, any liquor which contains more than $2\frac{1}{2}$ per cent. of proof spirits shall be conclusively deemed to be intoxicating.

The magistrate based the conviction on the evidence contained in the analyst's certificate; apart from that, he would not have found the defendant guilty.

The question was, whether the certificate was admissible in evidence.

"In any prosecution under this Act the production by the Inspector or any officer of the Crown of a certificate . . . signed by the Government analyst . . . shall be conclusive evidence of the facts stated in such certificate:" sec. 106 of the Liquor License Act.

"Inspector" means an Inspector of Licenses: sec. 2 (d). Admittedly the Chief Constable was not the "Inspector."