

therefore read what was said. The Chief Justice of Ontario said, p. 204: "I have no doubt as to the correctness of the judgment appealed from, and the appeal must therefore be dismissed. A police magistrate, it is true, may *ex officio* act as a justice of the peace, but when he acts he acts not strictly as a justice of the peace, but as a police magistrate, and convictions made by him are made by him in that capacity, so that no return of the conviction to the clerk of the peace is necessary." Mr. Justice Osler said, p. 204: "I am of the same opinion. Section 6 of R. S. O. ch. 77 gives individual exemption. The police magistrate has the powers of a justice of the peace, but when he acts he acts as a police magistrate." Mr. Justice MacLennan concurred in the judgment.

All these objections, therefore, fail; but other objections remain to be considered: (1) whether upon the papers returned there was any evidence which warranted a conviction for the offence of which the applicant was convicted; and (2) whether, assuming that there was that evidence, the Criminal Code applies so as to enable the Court to amend the conviction with regard to the punishment imposed, which, it is admitted by Mr. Cartwright, was in excess of the authority of the police magistrate.

We think it is unnecessary to express any opinion upon the second question, because we are of opinion that the first objection argued by Mr. Mackenzie—that no offence was disclosed upon the evidence—is entitled to prevail. All that is returned by the magistrate as the evidence before him is a document headed "Copy of evidence, *Rex v. Reedy*," and reading: "J. J. Reedy charged with unlawfully keeping liquor for the purpose of sale, barter, and traffic therein without the license therefor by law required. Pleads not guilty. G. E. Morrison, sworn: visited Reedy's pool room and saw bar, glasses, &c. Had all kinds of soft drinks. Produced invoice from wine company. Got a barrel of cider containing a good part of alcohol. J. J. Reedy, sworn: admitted having the goods as represented by Mr. Morrison, but said, 'I did not buy it for alcohol.'"

There is nothing in all this to shew that the evidence was directed to the act of the applicant upon which the charge was based. For all that appears, what was deposed to by Morrison, and what is admitted by Reedy, may have had application to a different time and a different place.