

SUTHERLAND, J., IN CHAMBERS.

DECEMBER 22ND, 1916.

*REX v. LAKE.

Ontario Temperance Act—Conviction for Keeping Intoxicating Liquor for Sale without License—Jurisdiction of Convicting Justices—Mayor and Alderman of City—Ex Officio Justices—Municipal Act, R.S.O. 1914 ch. 192, sec. 350—Offence against sec. 40 of 6 Geo. V. ch. 50—Evidence—Finding of Justices—Motion to Quash Conviction—Relevancy of Testimony—Search-warrant—Insufficiency of Information—Effect upon Conviction.

Motion by the defendant to quash his conviction by two Justices of the Peace for keeping intoxicating liquor for sale upon his premises in the city of London, without a license, in contravention of the Ontario Temperance Act, 1916, 6 Geo. V. ch. 50.

N. P. Graydon, for the defendant.

T. G. Meredith, K.C., for the complainant.

SUTHERLAND, J., in a written judgment, said that the convicting Justices were the Mayor and an Alderman of the city of London, who were, by virtue of sec. 350 of the Municipal Act, R.S.O. 1914 ch. 192, ex officio Justices of the Peace for the city. It was contended that they had no power to hear the case or convict—that, in the contemplation of the Ontario Temperance Act, it is only Justices appointed in the ordinary way under the Justices of the Peace Act, R.S.O. 1914 ch. 87, who have jurisdiction. The learned Judge said that once the Mayor and Alderman made their declarations of office and qualification they became, under sec. 350 of the Municipal Act, ex officio Justices for all purposes incidental to the office.

The conviction appeared to have been made under sec. 40 of the Act. The evidence shewed that when the defendant's dwelling-house was searched by police officers, in pursuance of a search-warrant, a large quantity of intoxicating liquor was found, and two men were drinking porter with the defendant in the cellar. It was urged that there was no evidence to support the conviction; but the learned Judge said that there was evidence which, if believed, would support the conviction. The Justices saw the witnesses and were in a better position to weigh their testimony than a Judge could be.

It was argued that evidence that one Anderson was seen