

tarpio never threatened him. But Thomas was then referring to what occurred after the party reached Hagersville, and not to what took place in the motor-car when Arsino demanded the money. In the circumstances, Santarpio's presence in the car connected him sufficiently with Arsino's act to make him (Santarpio) *particeps criminis*.

Motions dismissed with costs.

KELLY, J., IN CHAMBERS.

OCTOBER 25TH, 1920.

REX v. SILVERMAN.

Criminal Law—Magistrate's Conviction—Warrant of Commitment—Variance—Amendment—Discretion—Evidence—Motion for Discharge of Prisoner on Habeas Corpus—Offence against Ontario Temperance Act, sec. 40—Selling Intoxicating Liquor without License—Entry and Search of Private Dwelling House without Warrant—Costs.

Motion, on the return of a writ of habeas corpus, for an order for the discharge of the defendant from custody.

R. H. Greer, for the defendant.

F. P. Brennan, for the Attorney-General.

KELLY, J., in a written judgment, said that on the 1st October, 1920, the accused was convicted, by one of the Police Magistrates for the City of Toronto, of the offence of unlawfully having kept intoxicating liquor for sale without having first obtained a license, in contravention of the Ontario Temperance Act, and it was adjudged that he should forfeit and pay \$1,000, and also pay to the complainant \$3 for his costs, and in default of payment of these sums forthwith that he should be imprisoned in the municipal farm for men for 3 months, unless the said sums and the costs and charges of the commitment and conveying of the accused to the municipal farm should be sooner paid; and, in addition, that he be imprisoned in the municipal farm for 30 days. The warrant of commitment set forth that for such offence the defendant had been "fined \$1,000 and \$3 costs, or in default of payment to be committed to the Toronto municipal farm for 3 months, and in addition is committed for 30 days to said farm," and it was ordered that he be taken to prison accordingly.