

MASTEN, J., IN CHAMBERS.

MARCH 10TH, 1917.

*REX v. THOMPSON.

Ontario Temperance Act—Conviction for Receiving Order for Liquor for Beverage Purposes—Evidence—Findings of Magistrate—6 Geo. V. ch. 50, sec. 42—Interpretation of—Application to Non-commercial Transaction—Jurisdiction of Magistrate—Right to Examine Evidence upon Motion to Quash Conviction—Costs.

Motion to quash a conviction of the defendant by the Police Magistrate for the District of Temiskaming for unlawfully receiving an order for intoxicating liquor for beverage purposes, contrary to sec. 42 of the Ontario Temperance Act, 1916, 6 Geo. V. ch. 50: "Every person, whether licensed or unlicensed, who, by himself, his servant, or agent, canvasses for, or receives, or solicits orders for liquor for beverage purposes within this Province, shall be guilty of an offence against this Act."

J. Haverson, K.C., for the defendant.

J. R. Cartwright, K.C., for the Police Magistrate.

MASTEN, J., in a written judgment, set out the findings of the magistrate: "This man ordered some whisky for Talki at Talki's request. Talki gave him \$6.25 to send for the liquor for him, which he did, bringing the liquor in, in his own name. Liquor, unless shewn to be for special purposes. Well known that liquor as liquor is 'beverage.' I find the defendant guilty and convict him and fine him \$50 and costs \$4 or two months in North Bay gaol."

The learned Judge said that, if it were not impertinent to the discussion of a motion to quash a conviction, he would say that the testimony before the magistrate afforded a truthful representation of the real occurrence, and was not a sham; that the defendant did not receive an order from Talki; that there was no order for liquor until the defendant posted his letter ordering it from a place outside the Province; that the transaction was really the appointment by Talki of the defendant as his agent; that the transaction was in truth fortuitous, friendly, and non-commercial, as distinguished from a transaction which could be characterised as commercial or to which the terms "canvass for," "receive,"