

ROSE, J., IN CHAMBERS.

NOVEMBER 20TH, 1920.

*REX v. MARTEL.

Ontario Temperance Act—Magistrate's Conviction for Offence against sec. 41—Having Liquor in Place other than "Private Dwelling House"—Apartment or Suite of Rooms in Building Containing two other Suites—Building not in City—Sec. 2 (i) (i) and (ii) of Act—Liquor Kept in Box outside of House—Evidence—Inadmissible Testimony of Defendant and Wife—Other Evidence—"Substantial Wrong"—Sec. 102a. (8 Geo. V. ch. 40, sec. 19).

Motion to quash a conviction of the defendant, by the Police Magistrate for the Town of Cochrane, for having intoxicating liquor in a place other than the private dwelling house in which the defendant resided, contrary to sec. 41 of the Ontario Temperance Act.

J. M. Ferguson, for the defendant.

F. P. Brennan, for the magistrate and informant.

ROSE, J., in a written judgment, said that it was clearly proved, by evidence to which no objection could be taken, that the defendant had intoxicating liquor in his dwelling; and the first question to be decided was whether that dwelling was or was not a "private dwelling house," within the meaning of the Act. It answered the description contained in sec. 2 (i) of the Act, for it was "a separate dwelling with a separate door for ingress and egress," and it was "actually and exclusively occupied and used as a private residence." But it was said that it was taken out of the class of private dwelling houses by sub-clause (i) of sec. 2 (i), which enacts that "private dwelling house" does not include or mean, inter alia, "any house or building the rooms or compartments in which are leased to different persons."

The defendant and his family occupied a dwelling on the ground floor of a building; there was another dwelling on the same floor occupied by another tenant. Each tenant had his own door leading into the street; the defendant had, in addition, a door leading into a yard in the rear; there was no internal communication between the defendant's part and the part occupied by the other tenant. The part of the building above the ground floor was occupied, as a dwelling, by a third tenant. Access to it was by an outside stairway; there was no internal communication between it and the ground floor. The building was not in a city, and sub-clause (ii) of sec. 2 (i) did not apply.