

MIDDLETON, J., IN CHAMBERS.

DECEMBER 23RD, 1920.

*REX v. HAYTON.

Ontario Temperance Act—Magistrate's Conviction for Offence against sec. 41—Having Intoxicating Liquor in Place other than Private Dwelling House—Box Said to Contain Liquor—Absence of Evidence to Shew Contents—Label not Evidence—Improper Conduct of Magistrate—Receiving Statements in Absence of Accused before Adjudication—Evidence—Prejudice—Conviction Quashed—Costs—Protection of Magistrate.

Motion to quash the conviction of the defendant, by the Police Magistrate for the City of Peterborough, for having intoxicating liquor in a place other than his (the defendant's) private dwelling, contrary to the provisions of the Ontario Temperance Act.

G. N. Gordon, for the defendant.

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

MIDDLETON, J., in a written judgment, said that the proceedings before the magistrate were attacked as being unfair and contrary to natural justice, in that the magistrate acquired information from persons interested, behind the back of the defendant.

A box which was said to contain intoxicating liquor was sent by express from Montreal, addressed to a man named Edwards in Peterborough. The box was delivered, and the express charges were collected. Edwards said that he did not order the liquor, and thereupon the defendant, who was a driver for the express company, called at Edwards's house, repaid him the express charges, and took away the box, removing it to his own house. The defendant was prosecuted, not for stealing the box, but for having the supposed liquor at a place other than his private dwelling—presumably upon the street.

No evidence whatever was given to shew that the box contained liquor. It was said to have been branded "liquor," but whether truly or not no one knew. The defendant at the hearing before the magistrate relied upon the failure to prove his guilt in this vital respect.

The magistrate reserved judgment; and, after that, on two occasions, the prosecutor and the express agent discussed the matter with the magistrate, apparently endeavouring to persuade him that the label on the box and the entries in the express company's book amounted to proof of the contents of the box.