

MASTEN, J., IN CHAMBERS.

OCTOBER 17TH, 1917.

## REX v. BREEN.

*Ontario Temperance Act—Conviction of Druggist for Keeping Intoxicating Liquor for Sale for other than Strictly Medicinal Purposes—Motion to Quash—Preliminary Objection—Right of Appeal under sec. 92 (2)—Right to Certiorari Taken away—Ontario Summary Convictions Act, R.S.O. 1914 ch. 90, sec. 10 (3).*

Motion to quash a conviction of the defendant, by George Taylor Denison, Police Magistrate for the City of Toronto, for that the defendant, being a druggist, in August, 1917, at the city of Toronto, did unlawfully keep liquor for sale for other than strictly medicinal purposes, in contravention of the Ontario Temperance Act, 6 Geo. V. ch. 50.

F. J. Hughes, for the defendant.

J. R. Cartwright, K.C., for the Crown and the magistrate.

MASTEN, J., in a written judgment, said that, on the argument of the motion, a preliminary objection was taken by Mr. Cartwright, viz., that under the provisions of sec. 10 (3) of the Summary Convictions Act, R.S.O. 1914 ch. 90, certiorari was taken away, because the Ontario Temperance Act provides an appeal in cases against a druggist. For the reasons stated in *Rex v. Warne Drug Co. Limited*, ante, effect must be given to this preliminary objection.

It was here contended that the magistrate had no jurisdiction, and consequently that certiorari was not taken away; also that the conviction was bad on its face for uncertainty as to time; but in *Rex v. Cantin* (1917), 39 O.L.R. 20, the majority of the Court, speaking by Mr. Justice Riddell, said of such a case: "We could interfere only if it were made to appear that the magistrate's commission did not justify him in exercising jurisdiction in the locus or that he was not in fact proceeding on an alleged violation of the Act." These words appeared to be wide enough to cover the present case; and the learned Judge expressed no opinion on the merits.

The preliminary objection should be allowed.

*Motion refused with costs.*

