

"Public place" in sec. 13 above, especially when taken in connection with the word "street" which precedes it, must mean a place over which the public have rights as over a street, and not a place where, as a hotel, persons are permitted to go for accommodation such as a hotel affords.

I am unable to agree with the contentions set up that the hall-way and rooms of the hotel, where alone the accused was found intoxicated at the time in question, is a public place within the meaning and intention of sec. 13 of the amending Act, and the conviction on that ground alone, apart from any others, must be quashed with costs.

Though giving protection to the magistrates I must draw attention to the loose and unsatisfactory manner in which the papers in this case, such as the information and conviction and amended convictions, were prepared.

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DIVISIONAL COURT.

DECEMBER 6TH, 1912.

RE HOLMAN AND REA.

4 O. W. N. 434.

*Criminal Law—Criminal Procedure—Theft—Police Magistrate—Criminal Code, ss. 665, 668, 707, 708—Police Magistrate's Act, 10 Edw. VII. c. 36, ss. 24, 31—Place where Offence Committed—Magistrate Seised of Case—Extent of Prohibition—Crown Attorney Acting as Counsel for Party.*

Motion by one Holman, the complainant in a charge of theft for prohibition to the police magistrate at St. Mary's in the county of Perth. The warrant was issued at Stratford in the same county and the accused apprehended there, brought before the police magistrate there, admitted to bail and directed to appear before the police magistrate at St. Mary's the next day. The complainant was not notified of the hearing at Stratford, and was not present, but was present at the hearing at St. Mary's the next day, and objected to the assumption of jurisdiction by the magistrate. The latter proceeded with the hearing in spite of having been served with a notice of motion for prohibition, and assumed to acquit the accused in the absence of the complainant. Complainant urged that the police magistrate at Stratford having been made seised of the matter could not commit accused for trial before another magistrate, and respondents urged that in any event as an acquittal had taken place an order for prohibition was useless.

SUTHERLAND, J., *held* (23 O. W. R. 219; 4 O. W. N. 207), that the magistrate at Stratford acted properly in giving the accused a preliminary hearing and in his discretion committing him for trial before another magistrate having jurisdiction.

Motion dismissed with costs.

DIVISIONAL COURT *held*, that once a magistrate is seised of a prosecution for an indictable offence he has no power to discharge himself or request another magistrate to act for him.

*Regina v. McRae*, 28 O. R. 569, and other cases referred to.

That prohibition will be granted at the very latest stage as long as there is anything to prohibit and in this case the issuance of a certificate of acquittal could be prohibited.

*Brazill v. Johns*, 24 O. R. 209 referred to.

Appeal allowed and order of prohibition granted with costs.