

LATCHFORD, J., IN CHAMBERS.

JUNE 26TH, 1918.

REX v. BRACCI.

*Ontario Temperance Act—Magistrate's Conviction for Keeping Intoxicating Liquor for Sale—Evidence Taken in another Case Improperly Admitted—Magistrate Influenced by Evidence—Certificates of Magistrate—Mutilation of Depositions—Credibility of Magistrate—Order Quashing Conviction.*

Motion to quash the conviction of Luigi Bracci, by the Police Magistrate for the Town of Oakville, for keeping intoxicating liquor for sale in contravention of the Ontario Temperance Act, 6 Geo. V. ch. 50.

M. J. O'Reilly, K.C., for the defendant.

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

LATCHFORD, J., in a written judgment, said that the magistrate had attempted to establish that the conviction was made on a day subsequent to that on which it was in fact made, and, by what he called a review of the evidence, dated the 8th March, 1918, to supplement the evidence given at the trial.

The trial undoubtedly took place on the 7th March. One certificate of the magistrate, forming part of the formal return, stated that the conviction also was on that date. Another certificate, read by counsel for the Crown, and the "review" of the evidence, both signed by the magistrate, set forth that the conviction was made on the 8th March. And the transcript of the evidence taken by the magistrate had been so mutilated that it appeared probable that the portion excised of one of the sheets of paper on which the depositions of the witnesses were set out had contained the date "7th March," with, possibly, a memorandum of the conviction.

It was beyond question that the conviction was made on the 7th March.

At the trial the magistrate admitted evidence of what one Gray had sworn in another case. This evidence was undoubtedly inadmissible and highly prejudicial to the accused.

Evidence was adduced on the 7th March that certain deliveries of express matter had been made to Bracci within one month; but the magistrate's original record failed to shew that any of such deliveries was of liquor.

All that was proved against the defendant was, that he had a case of gin in his house, almost intact.