Motion to quash the conviction of the defendant by the Police Magistrate for the City of Hamilton for the offence of unlawfully keeping intoxicating liquor for sale, without a license, contrary to the provisions of sec. 40 of the Ontario Temperance Act.

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

ORDE, J., in a written judgment, said that the two substantial grounds upon which it was sought to quash the conviction were: (1) that there was no evidence to support it; and (2) that the magistrate improperly admitted irrelevant evidence, which affected his judgment, to the prejudice of the accused.

There was ample evidence that the accused had strong beer upon his premises; he admitted that he had several bottles, but said that they were for his own private use. There was, therefore, evidence constituting prima facie proof of guilt upon a charge of keeping for sale: sec. 88.

It was contended that possession of liquor could not be treated as prima facie proof of guilt unless the liquor was found upon a search made under a search-warrant issued under sec. 67. If that section were the only one which created the presumption of guilt upon proof of possession, this argument might have some force. The concluding words of sec. 67 and the provisions of sec. 88 overlap; but to give effect to the argument now advanced would be to nullify the effect of sec. 88 completely.

There was sufficient prima facie evidence of possession upon which the magistrate could convict.

It was urged that, where the presumption of guilt is met by evidence (of the accused or some one else) tending to rebut the presumption, the magistrate's decision is open to review upon a motion to quash: Rex v. Covert (1916), 28 Can. Crim. Cas. 25, and Rex v. Barb (1917), 28 Can. Crim. Cas. 93, Alberta cases. Those decisions are in direct conflict with the Ontario cases, of which Rex v. Le Clair (1917), 39 O.L.R. 436, is an example. The law on this point is too well-settled in this Province to leave room for any question except in some higher Court.

In all cases of summary conviction where it is clear that the accused has not had a fair trial or the magistrate's judgment has proceeded upon grounds that are improper or unfair to the accused, the conviction is open to review.

It was said that the fact that drunken men had been seen coming from the place where the liquor was found was not relevant to the issue, and, having been admitted, might have affected the