

MIDDLETON, J., IN CHAMBERS.

SEPTEMBER 26TH, 1917.

*REX v. AXLER.

Ontario Temperance Act—Conviction for Keeping Intoxicating Liquor for Sale—Compound Containing Large Percentage of Proof Spirits—Secs. 2 (f) and 88 of 6 Geo. V. ch. 50—Evidence of Fitness for Use and Actual Use as Beverage with Resulting Intoxication—Admissibility—Sec. 125 of Act—Absence of Medication—Proprietary or Patent Medicine Act, 7 & 8 Edw. VII. ch. 56—Effect as Regards Ontario Act.

Motion to quash a conviction of the defendant by a magistrate for an offence against the Ontario Temperance Act.

T. N. Phelan, for the defendant.

E. Bayly, K.C., for the Crown.

MIDDLETON, J., in a written judgment, said that the defendant was a wholesale grocer, and had in his possession at his warehouse four cases of "Hall's wine." This on analysis was found to contain 31.33 per cent. of proof spirits, and so must be "conclusively deemed to be intoxicating:" sec. 2 (f) of the Ontario Temperance Act, 6 Geo. V. ch. 50.

The defendant was prosecuted for keeping for sale contrary to that Act; and, under sec. 88, having been proven to be in possession of liquor, he was liable to be convicted unless he proved that he did not commit the offence charged.

The Crown did not rest its case upon this section, but gave evidence going to shew that the liquor in question was capable of being used as a beverage, and was in fact a common beverage in foreign boarding-houses where drinking was going on, and that its use in these places resulted in intoxication.

The first objection was to this evidence. The learned Judge could see no foundation for rejecting it. It went to confirm the statutory presumption that the liquor was intoxicating and to negative the suggestion that the wine was so medicated as to prevent its use as an alcoholic beverage.

The main argument was based on sec. 125, which stipulates that the Act shall not prevent the sale (a) by a druggist or by the manufacturer, of (i) any tincture, fluid extract, essence or medicated spirit containing alcohol prepared according to a formula of the British Pharmacopœia or other recognised standard work on pharmacy, or (ii) medicine,