Section 1019 of the Code being effective where no substantial wrong or miscarriage has been occasioned: Regina v. Hazen (1893), 20 A.R. 633; Rex v. Michaud (1909), 17 Can. Crim. Cas. 86; Kelly v. The King (1916), 54 S.C.R. 220; Rex v. Thompson, *supra*; no good purpose would be served by reserving a case.

Motion refused.

MIDDLETON, J., IN CHAMBERS. NOVEMBER 28TH, 1917.

*REX v. HANLEY.

Ontario Temperance Act—Offence against sec. 41—Having Intoxicating Liquor in Possession—Conviction by Magistrate— Arrest without Warrant—Subsequent Proceedings not Invalidated—Second Offence—Improper Reception of Evidence of Former Conviction—Stenographer's Notes—Secs. 74 (2), 96—Directory or Imperative—Evidence to Support Conviction —Credibility of Witnesses—Question for Magistrate.

Motion to quash the conviction of Walter Hanley, by the Police Magistrate for the City of Hamilton, for that the accused had intoxicating liquor in his possession, at a certain place in that city, contrary to sec. 41 of the Ontario Temperance Act, 6 Geo. V. ch. 50, the conviction being for a second offence.

T. N. Phelan, for the accused.
J. R. Cartwright, K.C., for the Crown.

MIDDLETON, J., in a written judgment, said that it was argued, first, that the accused was wrongfully arrested without warrant, which invalidated all that was subsequently done. But this point had been determined adversely to the accused by Rex v. Hughes (1879), 4 Q.B.D. 614. The subsequent proceedings were not invalidated if there was no right to arrest without a warrant; and, *semble*, there was no such right.

It was contended, next, that the magistrate had violated the provisions of sec. 96 of the Act by receiving evidence of the earlier conviction before determining the guilt of the accused of the second offence. This had not been established. If the stenographer's notes were a complete record of all that took place, the proceedings would appear to be defective; but, by sec. 74 (2), the stenographer is called upon only "to take down the evidence