

SUTHERLAND, J., IN CHAMBERS.

AUGUST 1ST, 1917.

## \*REX v. MARTIN.

*Ontario Temperance Act—Magistrate's Conviction for Offence against sec. 41—Unlawfully Having Intoxicating Liquor—"Indian"—Evidence—Indian Act, R.S.C. 1906 ch. 81, secs. 2 (f) (i), 137—Affidavit Supplementing Evidence before Magistrate—Inadmissibility—Sentence—Hard Labour"—Interpretation Act, R.S.O. 1914 ch. 1, sec. 25—Distress—Amendment—Criminal Code, sec. 889—Absence of Written Information—Place of Offence.*

Motion upon the return of a habeas corpus to discharge the defendant from custody under a conviction by the Police Magistrate for the City of Hamilton for an offence against the provisions of sec. 41 of the Ontario Temperance Act, 6 Geo. V. ch. 50, by unlawfully having intoxicating liquor in his possession, in the city of Hamilton. He was sentenced to pay a fine of \$200; in default of payment the fine to be levied by distress; and in default of sufficient distress the defendant to be imprisoned and kept at hard labour for three months. The fine not being paid, the defendant was in prison when the application was made.

D. O. Cameron, for the defendant.

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

SUTHERLAND, J., in a written judgment, said that it was argued (1) that the defendant was an Indian within the meaning of the Indian Act, R.S.C. 1906 ch. 81, and was therefore under the exclusive jurisdiction of the Dominion Parliament. Section 137 of the Indian Act provides for the punishment of an Indian who has intoxicating liquor in his possession. But the only evidence that the defendant came under the Indian Act was his answer to the question asked him when he testified on his own behalf before the magistrate: "Are you an Indian?" A. "Yes." By the interpretation clause of the Indian Act, sec. 2 (f) (i), "Indian" means "any male person of Indian blood reputed to belong to a particular band." The statement of the accused, therefore, did not go far enough; and an affidavit supplementing the statement of the accused could not be admitted: *Regina v. Bolton* (1841), 1 Q.B. 66; *Rex v. Morn Hill Camp Commanding Officer*, [1917] 1 K.B. 176; *Rex v. Chappus* (1917), 12 O.W.N. 121. On this ground of objection, the defendant failed.