

ORDE, J., IN CHAMBERS.

DECEMBER 24TH, 1920.

*REX v. FAULKNER.

Ontario Temperance Act—Magistrate's Conviction for Offence against sec. 41—Having Intoxicating Liquor in Place other than Private Dwelling House—Proof of Receipt of Large Quantity of Liquor at Defendant's Private House—Disappearance of Most of it in 12 Days—Unwarranted Inference that Defendant Had it Elsewhere—Sec. 88 of Act—Conviction Quashed—Amendment—Secs. 78, 102.

Motion to quash the conviction of the defendant, by the Police Magistrate for the Town of Cobourg, for the offence of having intoxicating liquor in a place other than the private dwelling house in which he, the defendant, resided.

Keith Lennox, for the accused.

F. P. Brennan, for the magistrate.

ORDE, J., in a written judgment, said that an information was laid against the defendant charging that, at some time between certain dates, he did have or keep liquor in a place other than the private dwelling house in which he resided. The sole evidence against the defendant was that on the 29th September, 1920, there had been a delivery of 5 cases of whisky, consisting of 120 Imperial pints, at the defendant's dwelling house, and that on the following 11th October, when the inspector searched the house, there were only 24 pints left. There was no evidence of any sale by the defendant, and there was some evidence of entertainment of his friends and also that he consumed a great deal of liquor himself. When delivering judgment, the magistrate said to the defendant: "The Crown has also proved that on the 11th October you had but one case, or about 24 Imperial pints, in your possession. It is for you to prove (sec. 188 of the Ontario Temperance Act) that you did not commit the offence for which you are charged, or to explain to the satisfaction of the Court what you have done with the 96 Imperial pints between the date you received them and the date of the inspector's search on the 11th October, 1920." The magistrate then pointed out that the defendant had not done so, and that there was no evidence to shew that he and his guests could have consumed 96 pints in 12 days, and said: "The conclusion of the Court is that you have disposed of the liquor in some other way in violation of the Ontario Temperance Act," and he then convicted the defendant for that he "did have