

SECOND DIVISIONAL COURT.

APRIL 25TH, 1919.

*REX v. AVON.

Criminal Law—Keeping Disorderly House—Summary Trial and Conviction by Police Magistrate—Absence of Information and Summons—Foreigner—Waiver—Jurisdiction—Sentence—Imprisonment for one Year in Reformatory—Power of Magistrate Exceeded—Criminal Code, secs. 228, 773 (f), 774, 777, 781—Habeas Corpus—Power of Court to Amend Conviction by Reducing Term and Changing Place of Imprisonment—Criminal Code, secs. 754, 1120, 1124—Conviction and Proceedings before Magistrate Brought before Court but not on Certiorari—Discharge of Defendant from Custody.

Appeal by the defendant from the order of MIDDLETON, J., ante 162.

The appeal was heard by MEREDITH, C.J.C.P., MAGEE, J.A., BRITTON and RIDDELL, JJ., and FERGUSON, J.A.

R. L. McKinnon, for the appellant.

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

MEREDITH, C.J.C.P., read a judgment in which he said that the defendant, who attended a Police Court as a mere spectator, found himself, without information, summons, or warrant, immediately tried and convicted of a grave offence and sentenced to one year's imprisonment at hard labour in the Ontario Reformatory. The man was an Italian, so unfamiliar with the English language that the magistrate called upon an interpreter to explain to him (the defendant) the nature of the charge upon which he was being tried. To say that the prisoner was voluntarily before the magistrate, or that he waived any of his rights, was manifestly untrue. The man did not know enough of the English language or of Canadian law to waive anything of the kind.

There was, of course, a reason for the prosecution. The magistrate had been investigating a charge in respect of immoral conduct on the part of a girl, and, having failed to convict the men involved in it, turned his inquiry to the prisoner, in whose house the immoral conduct was said to have taken place.

The magistrate, although he assumed "absolute jurisdiction" over the case, not giving the man a choice of trial by jury, proceeded, after convicting him, to pass sentence upon him as if he had been tried by a jury and to impose upon him the severest penalty possible in such a case, though the limit under his absolute jurisdiction was only about half as much, and then fell into