

ROSE, J., also agreed in the result, for reasons stated in writing.

FERGUSON, J.A., read a dissenting judgment. He was of opinion that there had been a substantial miscarriage, and that there should be a new trial.

Appeal dismissed; FERGUSON, J.A., dissenting.

SECOND DIVISIONAL COURT.

FEBRUARY 26TH, 1917.

McLAREN v. KNIGHT.

Trespass—Entry upon Hotel Premises—Search for Intoxicating Liquor—Justification under Search-warrant—Canada Temperance Act, sec. 136—Amending Act, 6 & 7 Geo. V. ch. 14—Form of Warrant—“All Necessary and Proper Assistance”—Request to Defendant by Constable to Assist—Number of Persons Called on—Discretion of Constable—Entry with Intention not Covered by Warrant—Illegal Acts after Entry—Failure to Prove—Withdrawal of Case from Jury.

Appeal by the defendant from the judgment of the County Court of the County of Perth, in an action for trespass in entering a hotel to search for intoxicating liquor. The action was tried with a jury, who found a verdict for the plaintiff for \$1, for which sum and costs judgment was given.

The appeal was heard by RIDDELL and LENNOX, JJ., FERGUSON, J.A., and ROSE, J.

J. J. Gray, for the appellant.

R. S. Robertson, for the plaintiff, respondent.

RIDDELL, J., read the judgment of the Court. He said that an information was laid by one Powell before the Police Magistrate for the Town of St. Mary's, then under the Canada Temperance Act, and a search-warrant was issued by him on the 29th July, 1916, addressed to all and any of the constables or other peace officers in the County of Perth, directing them, “with necessary and proper assistance, to enter into” the hotel and premises known as the Royal Edward Hotel, in the town of St. Mary's, the plaintiff's hotel, “and there diligently search for intoxicating