

SUTHERLAND, J., IN CHAMBERS.

APRIL 25TH, 1919.

REX v. KALLAS.

Ontario Temperance Act—Magistrate's Conviction for Offence against sec. 41 (1) of 6 Geo. V. ch. 50—Having Liquor in Unlawful Place—Boarding-house—Clause (a) of sec. 41 (1), Added by 7 Geo. V. ch. 50, sec. 10—Motion to Quash Conviction—Objections to Conviction—Defendant not Allowed Counsel and not Allowed to Adduce Evidence—Failure of Objections on Facts—Absence of Evidence of Defendant Having Liquor in Place Named in Information—Evidence that Defendant had Liquor in Public Street—Effect of sec. 78 of Principal Act—Amendment not Made or Suggested by Magistrate—Prima Facie Case—Onus—Secs. 85, 88—Conviction Quashed.

Motion to quash the conviction of the defendant by the Police Magistrate for the City of Brantford, upon an information for that the defendant unlawfully had liquor in an unauthorised place, namely, 17 Scarfe avenue, in the city of Brantford, a boarding-house where there are more than three boarders, contrary to the provisions of the Ontario Temperance Act, sec. 41.

Section 41 (1) of the Act, 6 Geo. V. ch. 50, provides that no person shall have or keep or give liquor in any place other than in the private dwelling-house in which he resides, without having a license; and clause (a), added by sec. 10 of 7 Geo. V. ch. 50, provides that "any person who drinks liquor in a place where such liquor cannot lawfully be kept shall be deemed to have liquor in contravention of this section."

A. R. Clute, for the defendant.

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

SUTHERLAND, J., in a written judgment, said that the first objection was that the defendant was not permitted to have counsel. There was nothing on the face of the proceedings to shew that he represented to the magistrate that he had no counsel or requested a delay of the trial to retain counsel. The motion failed on this ground.

The second point was that the defendant was not given any opportunity on the hearing to adduce evidence on his own behalf. The proceedings shewed that he did testify on his own behalf, and the proceedings did not disclose any request on his part to offer further evidence or obtain delay to produce it. This ground failed also.

Thirdly, it was contended that there was no evidence to sustain