declare a cause to be at issue when it is not, nor to add a party defendant and without notice to him proceed to trial against him by ordering that an appearance which he did not authorise, and which does not purport to be an appearance for him, and which was an appearance in an action to which he was then no party, shall stand as his appearance. Much less has it any power to order that an affidavit made by some one else shall stand as his oath.

The order having been made per incuriam, it was the duty of the Judge to whose attention it was brought to set matters right without any formal appeal. The learned Judge therefore directed that the order of the Master be amended by eliminating the improper provisions referred to, leaving Rules 134 (3) and 135 to their due operation.

The notice of trial should be set aside; and the costs of the motion should be costs to the applicant in any event.

Kelly, J., in Chambers.   February 9th, 1921.

REX v. McDONALD.

Ontario Temperance Act—Magistrate's Order for Confiscation of Intoxicating Liquor—No Evidence or Record of Conviction to Justify Order under secs. 66, 67, 68—No Indication that Proceedings Taken under sec. 70—Order Made without Authority —Motion to Quash—Notice not Served within 30 Days from Date of Order—Sec. 102 (2) of Act (7 Geo. V. ch. 50, sec. 33)— No Jurisdiction to Hear Motion—Dismissal—Costs.

Motion by the defendant to quash an order made by the Police Magistrate for the City of Windsor, directing the confiscation of a quantity of intoxicating liquor.

T. J. Agar, for the defendant.
F. P. Brennan, for the magistrate.

Kelly, J., in a written judgment, said that the defendant was charged with unlawfully having a quantity of liquor in a place other than his private dwelling house, contrary to the provisions of the Ontario Temperance Act. The investigation of the charge took place before the Police Magistrate for Windsor. The only record of the disposal of the matter was the certificate of the magistrate, given on the 28th July, 1920, that "I did summon and cause the above named to appear before me on the above charge,