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HIGH COURT DIVISION.

FALCONBRIDGE, C.J.K.B., IN CHAMBERS. DECEMBER 11TH, 1916

REX v. WILLIAMS.

Ontario Temperance Act — Magistrate's Conviction for Unlawfully Keeping Intoxicating Liquor—Sec. 41 (1) of 6 Geo. V. ch. 50 —Burden of Proof—Sec. 85—Question for Magistrate—Motion to Quash Conviction—Dismissal.

Motion to quash a conviction of the defendant by the Police Magistrate for the City of Hamilton for unlawfully having and keeping intoxicating liquor upon his premises without a license, contrary to sec. 41 (1) of the Ontario Temperance Act, 6 Geo. V. ch. 50.

J. G. Farmer, K.C., for the defendant.

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

FALCONBRIDGE, C.J.K.B., in a written judgment, said that the language of sec. 41 (1) of the Act was as wide as language could well be; and, by sec. 85, the burden of proving the right to have or keep or sell or give liquor shall be on the person accused of improperly or unlawfully having, etc., such liquor.

This was a question for the magistrate. He had convicted—and it could not be said that there was no evidence on which he could convict.

Motion dismissed with costs.

The Chief Justice, on the 21st December, added this memorandum: "As there seems to be some misunderstanding regarding the judgment in this case, it is proper to state that the decision was based on the particular facts appearing in the evidence, and