

implication to the satisfaction of the magistrates, the conviction must stand.

The learned Judge agreed with this view, and the motion failed on the first and second grounds stated in the notice of motion.

The third ground was, that the magistrates had acted improperly, because, after the hearing of the case, and before giving their decision, they, in company with the counsel for the prosecutor, and without notice to the defendant, and in his absence and in the absence of counsel representing him, discussed the case with the County Crown Attorney, and after such discussion found the defendant "guilty."

By sec. 72 of the Ontario Temperance Act, the provisions of the Ontario Summary Convictions Act, R.S.O. 1914 ch. 90, apply to every prosecution under the Temperance Act; and sec. 4 of the Summary Convictions Act makes Part XV. of the Criminal Code applicable to every case of an offence against a provincial statute.

Section 715 of the Code, which is found in Part XV., provides: "The person against whom the complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel, solicitor, or agent on his behalf."

Reference to *Rex v. Farrell* (1907), 15 O.L.R. 100, 12 Can. Crim. Cas. 524; *In re Rex v. McDougall* (1904), 8 O.L.R. 30; *Regina v. Justices of Suffolk* (1852), 18 Q.B. 416; *Regina v. Justices of Yarmouth* (1882), 8 Q.B.D. 525; *Regina v. Sproule* (1887), 14 O.R. 375, 387; and other cases.

The Crown Attorneys Act, R.S.O. 1914 ch. 91, sec. 8 (g), makes it the duty of the Crown Attorney to "advise a Justice of the Peace in respect to criminal offences brought before him for preliminary investigation or for adjudication if he requests him to do so by writing containing a statement of the particular case."

That procedure did not appear to have been followed in this case, and the statute could not be invoked in support of what was done.

The conviction could not stand—the defendant had not been "admitted to make his full answer and defence."

That conclusion, however, was not founded on the consultation with the Crown Attorney, but rather on the argument made by counsel for the prosecutor before the magistrates and the Crown Attorney, which resulted apparently in the conviction. Had counsel for the accused been permitted to be present, he might have been able to refer to the case where it was held that sec. 70 of the Ontario Temperance Act could not be invoked in the circumstances of this case.