

. If there was any estate other than that specifically devised which would not be required for payment of the testator's debts, the costs of this motion should be paid out of it; otherwise, there should be no costs.

MIDDLETON, J., IN CHAMBERS.

SEPTEMBER 11TH, 1915.

*REX v. SCAYNETTI.

Liquor License Act—Keeping Intoxicating Liquor for Sale—Magistrate's Conviction—Motion to Quash—Evidence—“Liquor”—“Beer”—R.S.O. 1914 ch. 215, sec. 2(i)—Judicial Knowledge.

Motion to quash a conviction of the defendant under the Liquor License Act, R.S.O. 1914 ch. 215, upon the ground that the evidence disclosed no offence, because (1) it was not shewn that the beer found on the defendant's premises was intoxicating liquor, and (2) the convicting magistrate could not, upon the evidence, infer that the beer was kept for sale.

M. J. O'Reilly, K.C., for the defendant.
Edward Bayly, K.C., for the Crown.

MIDDLETON, J., said that there was evidence upon which the magistrate could infer that the beer was kept for sale; whether another tribunal would arrive at the same conclusion upon the same evidence was not the question.

The evidence disclosed that beer was sold and being consumed. There was no contention before the magistrate that the beer was not in fact intoxicating—it was a brand of lager labelled “Regal.” The defendant asserted that he purchased the beer as the agent of his boarders and for them, and he contended that this did not in fact constitute an offence against the Act. Apparently the magistrate discredited this story.

By the Act, sec. 2(i), “liquor” includes all spirituous and malt liquors, and all combinations of liquors and drinks and drinkable liquids which are intoxicating; and any liquor which contains more than $2\frac{1}{2}$ per cent. of proof spirits shall be conclusively deemed to be intoxicating. It is not necessary to prove that the liquor was intoxicating if it was shewn that it was a spirituous or malt liquor. Looking at the definitions of “beer” in the Concise Oxford Dictionary and the Century Dictionary, beer is both a spirituous and a malt liquor.