

the constables of statements made by Sawyer which were not made in Ollman's presence, and were, of course, no evidence against him.

If Sawyer was "the actual offender," and Ollman's guilt was to be taken as established by reason of the fact that he was the occupant (sec. 84, sub-sec. 1), the conviction of Sawyer was a bar to the conviction of Ollman (sub-sec. 2, added by the amending Act of 1917, 7 Geo. V. ch. 50, sec. 30). Therefore, if the conviction could be supported, it must be upon the ground that Ollman and Sawyer were acting together, and that each had the beer; and the learned Judge did not think there was any evidence at all upon which the magistrate was justified in finding that they were so acting together. Sawyer's statements were no evidence against Ollman, and Sawyer's latest statement, which was that he was the tenant and owned the beer, was no evidence in Ollman's favour; and it did not follow from the fact that Sawyer's last statement and his plea of "guilty" were accepted that it was established in Ollman's favour that Ollman was not the tenant and had no ownership in the beer. But the question was not whether Ollman proved that he was innocent; but whether there was any proof that he was guilty, and there was no proof of his guilt. No doubt there was suspicion, but magistrates cannot convict upon suspicion under this Act any more than under any other Act.

The conviction should be quashed, with the usual order for the protection of the magistrate and officers.

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MASTEN, J.

FEBRUARY 10TH, 1921.

GIBSON v. TORONTO R.W. CO.

*Negligence—Nonrepair of Sidewalk in Amusement Park—Injury to Boy—Liability of Owner of Park—Occupation for Temporary Period by Club on Profit-sharing Basis—Injured Boy a Non-paying Licensee Coming to Park for his own Pleasure—Action for Damages—Nonsuit.*

Action for damages for injury suffered by the plaintiff owing to the negligence of the defendants, as he alleged.

The action was tried with a jury at a Toronto sittings.

T. N. Phelan, for the plaintiff.

D. L. McCarthy, K.C., for the defendants.