

ROSE, J., IN CHAMBERS.

FEBRUARY 10TH, 1921.

REX v. OLLMAN.

*Ontario Temperance Act—Magistrate's Conviction for Offence against sec. 40—Keeping Intoxicating Liquor for Sale—Evidence—Failure to Shew that Liquor was Owned by or under Control of Accused—Occupant of Premises—"Actual Offender"—Sec. 84 (1), (2)—Suspicion.*

Motion to quash a conviction of the defendant, made by the Police Magistrate for the City of Hamilton, on the 26th January, 1921, for an offence against the Ontario Temperance Act.

J. L. Counsell, for the defendant.

F. P. Brennan, for the magistrate.

ROSE, J., in a written judgment, said that Ollman and Sawyer and Henderson were accused, each in a separate information, of having or keeping intoxicating liquor for the purpose of barter or sale, at a certain house in Hamilton, on the 22nd January, 1921.

They were tried together, Henderson was acquitted, Sawyer pleaded guilty, and was convicted, Ollman pleaded "not guilty," but was also convicted.

There was evidence that Ollman had rented the house for the months of December and January for Henderson; but that, when Henderson found that he could not have it for so long a period, he had decided not to take it at all, and that Ollman had let Sawyer into possession. There was also evidence that on the day named in the information there was beer in the house, and that there were persons drinking and playing cards in the house, and that some money passed; so that it was quite fair to take it as established that the beer was there for sale. There was, however, no evidence that Ollman was in the house on that day or for some days previously. He lived next door, and was found outside when the policemen visited the premises; but, except for such inference as could be drawn from the fact that he had in the first place rented the house from the owner, there was no evidence that he had any possession or control over the beer. There was evidence that a week before, just after he had let Sawyer into possession, he had had beer there, which he had said was for his friends; but there was no evidence at all that the beer in respect of which he was prosecuted was his or was under his control. It was really unfair that he and Sawyer should be tried together, for the greater portion of the evidence consisted of an account by