

in money or an equivalent quantity of grain, or has an option to do either, it is really a sale, as the property in the goods has passed to the warehouseman, and he is to pay the grain or money.

Held, also, that as the property passed to the defendants upon delivery and acceptance of the grain, it is not like a case in which specific goods are stored, the property remaining in the original holder, with an oral agreement for a subsequent sale to the bailee; and the Statute of Frauds offers no bar to the recovery. Verdict for plaintiff for price of wheat as if sold at 38 cents per bushel affirmed with costs.

Metcalfe and McPherson, for plaintiff. *Wilson and A. C. Ewart*, for defendants.

Full Court.]

REGINA v. HERRELL.

[July 9.

Liquor License Act, ss. 151, 180, 182, 200, 209, 210—Evidence of former conviction—Amending conviction—Disqualification of magistrate—Certificate of former conviction.

Rule nisi to quash a conviction of defendant for a second offence under the Liquor License Act on the following grounds: (1) That there was not sufficient evidence of the commission of any offence under the Act, it being argued that there was no evidence to identify the liquor produced at the trial, and shown to be intoxicating, with the contents of the bottle furnished by the accused. (2) That the former conviction was not proved, there being nothing to show the identity of the defendant with the person named in the certificate produced. (3) That the convicting magistrate was disqualified to sit upon the case, as he was an honorary member of the Women's Christian Temperance Union, which had taken a great interest in enforcing the Liquor License Act, and had provided funds for that purpose.

Held, 1. Although the evidence was not satisfactory, it could not be said that there was no evidence to prove the commission of the offence, and under *Reg. v. Grant*, 5 M.R. 153, the finding of the magistrate could not be interfered with.

2. As the prosecution was really conducted by the town authorities, and not by the W.C.T.U., and the magistrate's connection with the society was only nominal, and he had taken no part in the conduct of its affairs, beyond having contributed \$1 towards a lecture fund, it could not be said that he was disqualified to adjudicate on the case. *Reg. v. Deal*, 45 L.T.N.S. 439, and *Leeson v. General Council, etc.*, 43 Ch. D. 366, followed.

3. It was necessary to prove the identity of the defendant with the person named in the certificate of the former conviction, the similarity of names not being sufficient for that purpose: *Queen v. Lloyd*, 1 Cox C.C. 51, nor even the personal knowledge of the magistrate; that the conviction must therefore be quashed. *Reg. v. Brown*, 16 O.R. 41, distinguished.

4. The evidence of the commission of the offence not being satisfactory, the court could not amend the conviction under sections 209 and 210 of the Act so as to make it a conviction for a first offence, because it could not be understood from it that the penalty or punishment appropriate to the offence