

HODGINS, J.A., IN CHAMBERS.

NOVEMBER 14TH, 1919.

REX v. ZURA.

REX v. OLLIKKILA.

Criminal Law—Magistrate's Convictions—Motion to Quash—Procedure—Rules (of 1908) 1279 et seq.—Notice under Rule 1281—Returns of Papers—Affidavits—Amended Conviction—Adjournment of Motion.

Motion to quash the convictions of the defendants, by the Police Magistrate for the City of Fort William, for the offence of having prohibited literature in their possession.

D. Campbell, for the defendants.
Peter White, K.C., for the Crown.

HODGINS, J.A., in a written judgment, said that a preliminary objection raised by the Crown should be overruled, as proper steps were taken to bring up the convictions under Rules 1279 et seq., including the deposit in each case of \$100.

The learned Judge was not prepared to deal with these cases until the papers were properly before the Court, in obedience to the notice prescribed by Rule 1281. This appeared to be the proper course in view of the judgment of a Divisional Court in *Rex v. Avon* (1919), 45 O.L.R. 633.

There were filed on these motions affidavits of the solicitor for the accused, exhibiting copies of the information, conviction, and evidence, together with two convictions, the authenticity of which no one vouched for; also affidavits of the accused, disputing that they individually pleaded "guilty."

The exhibits which were before the magistrate were not returned, although they were the objectionable matter itself, for the possession of which the accused had been convicted.

Upon the magistrate making a proper return, including all that was before him, the applications to quash will be disposed of. It will be entirely proper for the magistrate to return amended convictions if he deem it necessary: *Rex v. Graf* (1909), 19 O.L.R. 238. In view of the decision of *Boyd, C.*, in *Rex v. Dagenais* (1911), 23 O.L.R. 667, 18 Can. Crim. Cas. 287, the magistrate might certify, or, if he preferred it, make an affidavit, as to the allegation of the accused that they did not individually plead "guilty."