

judgment to justify the contention that any improperly admitted evidence influenced his mind, or did any substantial wrong to the accused. He found the accused guilty and stated in effect that the fact of seeing drunken men there placed upon the accused the onus of shewing that there was no sale in the circumstances. This seemed to be quite sound. With the onus already upon the accused, the burden of disproving his guilt must become heavier if drunken men are found in his place, in circumstances naturally leading to the inference that they were not getting the liquor for nothing. The magistrate's statement that he did not believe the evidence of the accused and his wife was criticised. As in *Rex v. De Angelis*, ante, the magistrate, by accepting the evidence adduced for the Crown, necessarily disbelieved the denials of the accused. That he said so was of no consequence.

For the same reasons as in the *Collina* case, the learned Judge dismissed the motion with costs and declined to reduce the sentence of 3 months' imprisonment imposed by the magistrate.

ORDE, J., IN CHAMBERS.

SEPTEMBER 4TH, 1920.

*REX v. JOHNSON.

Criminal Law—Magistrates' Conviction for Second Offence against sec. 41 of the Ontario Temperance Act—Insufficient Service of Summons—Criminal Code, sec. 658—Defendant not Present at Trial—Counsel Appearing for Defendant and Taking Part in Trial, though Objecting to Service—Authority—Retainer—Evidence—Waiver of Irregularity—No Substantial Wrong Occasioned.

Motion to quash a conviction of the defendant by two Justices of the Peace for an offence against sec. 41 of the Ontario Temperance Act.

C. A. Payne, for the defendant.
Edward Bayly, K.C., for the magistrates.

ORDE, J., in a written judgment, said that the only ground upon which the conviction was attacked in argument was, that, by reason of the service of the summons upon the wife of the defendant, instead of upon the defendant himself, and the defendant's non-attendance at the trial, there had not been a proper or fair trial.

On the 8th July, 1920, the defendant appeared with his counsel before the Justices at Madoc to answer a charge laid under sec. 41