

The appeal was heard by MULOCK, C.J.Ex., RIDDELL, SUTHERLAND, and KELLY, JJ.

R. T. Harding, for the appellant.

M. H. Ludwig, K.C., B. W. Essery, T. R. Ferguson, F. E. O'Flynn, and Gideon Grant, for several of the defendants, respondents.

THE COURT dismissed the appeal with costs, being of opinion that the case was not distinguishable from *Welch v. Ellis* (1895), 22 A.R. 255.

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### HIGH COURT DIVISION.

FALCONBRIDGE, C.J.K.B., IN CHAMBERS. OCTOBER 15TH, 1918.

### REX v. CONDOLA.

*Ontario Temperance Act—Magistrate's Conviction for Offence against sec. 41—Having Intoxicating Liquor in Place other than "Private Dwelling-house"—"Occupant"—Husband and Wife.*

Motion to quash the conviction of John Condola by the Police Magistrate for the Town of Sudbury for unlawfully having intoxicating liquor in a place other than his private dwelling-house: sec. 41 of the Ontario Temperance Act, 6 Geo. V. ch. 50.

T. M. Mulligan, for the applicant.

Edward Bayly, K.C., for the Attorney-General.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that he was unable to agree with the magistrate's view that the defendant's wife was to be held to be *the* occupant of the house.

Reference to *Rex v. Irish* (1909), 18 O.L.R. 351; *Kavanagh v. Barber* (1891), 12 N.Y. Suppl. 603; *Hamilton v. City of Fond du Lac* (1870), 25 Wis. 496.

The occupant is the one who has actual use or possession of a thing—the husband is the owner and has actual use and possession.

The conviction should be quashed without costs, and with the usual order protecting the magistrate.