

SUTHERLAND, J., IN CHAMBERS.

JUNE 26TH, 1919.

## REX v. O'DONNELL.

*Ontario Temperance Act—Magistrate's Conviction for Offence against sec. 41—Keeping Intoxicating Liquor in Place other than Private Dwelling House—Evidence—Question for Magistrate.*

Motion to quash the conviction of the defendant, by the Police Magistrate for the Town of Mount Forest, for a second offence against the Ontario Temperance Act, viz., the unlawful keeping of intoxicating liquor upon his premises, not being his private dwelling house, contrary to sec. 41 of the Act.

P. Kerwin, for the defendant.

J. R. Cartwright, K.C., for the Crown.

SUTHERLAND, J., in a written judgment, said that the defendant had been, on the 30th September, 1917, convicted of unlawfully keeping liquor for sale in a house in the town of Mount Forest, then occupied by his mother, with whom he was living. She had since died, and her daughter, May O'Donnell, the sister of the defendant, had occupied the house since her death.

The defendant was the owner of another building in the town, and the charge upon which the second conviction was based was that of unlawfully keeping liquor in that building, being a place other than his dwelling house.

Upon the trial he admitted the ownership of the building where the liquor was found, and the finding of it there.

The magistrate came to the conclusion, on the whole evidence, that the building was not, as the defendant testified, a private dwelling house and occupied by him as such. He accordingly convicted the accused as charged, and, this being his second offence under the Act, imposed a penalty of imprisonment in the common gaol at the city of Guelph, at hard labour, for 12 months.

The defendant moved to quash the conviction, upon the ground that there was no evidence that he had liquor in a place other than the private dwelling in which he lived, and that it was proved that the house referred to was the private dwelling in which he lived.

There was ample evidence to warrant the finding of the magistrate that the building was not the private dwelling house of the defendant, even if an alleged error in the taking down of his testimony were corrected as he suggested it should be. The magistrate chose to believe others rather than the defendant, and their