

The defendant contended that the warrant of commitment did not follow—that it substantially departed from—the conviction.

A variation, though substantial, is, on an application such as the present, within the discretion of the Court to remedy by amendment: *Rex v. Degan* (1908), 17 O.L.R. 366.

It was urged on behalf of the accused that, in the circumstances surrounding and leading up to the information against him, and in view of happenings at the hearing before the magistrate, that discretion should not now be exercised in favour of the prosecution.

If, upon the merits of the case, any reasonable doubt could be entertained as to the correctness of the magistrate's conclusion of guilt, that discretion might very properly be exercised in the prisoner's favour. But, having no such doubt, the learned Judge directed the necessary amendment to be made, and, confirming the conviction, dismissed the application.

In so doing, he was far from expressing approval of the entry and search of the defendant's dwelling house without a warrant. The Ontario Temperance Act is a part of our laws and should be duly observed; but the difficulty which exists in effectively administering it does not justify the introduction of improper or illegal methods in its enforcement. Unwarranted invasion of the privacy of homes is not to be tolerated, even in an endeavour to attain a desirable end. When it becomes necessary or advisable, for any legitimate purpose, that officers of the law should enter private houses, practice and the statute provide the procedure for so doing. The dismissal should, therefore, be without costs.

---

MIDDLETON, J.

OCTOBER 25TH, 1920.

RE SEXTON.

*Will—Construction—Absolute Gift to Widow—Repugnant Restriction—Power of Appointment.*

Motion by Francis W. Kidd, upon originating notice, for an order determining questions arising upon the will of one Sexton, deceased.

The motion was heard in the Weekly Court, Toronto.

T. H. Barton, for the applicant.

H. H. Shaver, for the executors of the testator's widow.

B. N. Davis, for persons claiming under Ethel L. Sexton.

MIDDLETON, J., in a written judgment, said that Francis W. Kidd, a grandson of the testator, whose mother, the testator's