

The learned Judge was of opinion, notwithstanding the words quoted from sub-clause (i), that the defendant's part of the building was a private dwelling house, and the defendant was not guilty of any offence in having liquor in the house.

In the yard behind the house was a large box, which could not be said to have formed part of the defendant's private dwelling house. There was testimony that the defendant had liquor in the box, but the greater part of it was inadmissible, being evidence extracted from the defendant and his wife, whom the magistrate, in spite of objection taken by counsel, held to be compellable witnesses for the prosecution. Apart from the inadmissible evidence, there was some evidence which, if believed, would perhaps support, but no more than support, a holding that the defendant had liquor in the box. It seemed probable that the evidence as to which weight was given as to the box was the inadmissible evidence, rather than the admissible. "Some substantial wrong," within the meaning of sec. 102a. (8 Geo. V. ch. 40, sec. 19), was, therefore, occasioned by the admission of the evidence of the defendant and his wife: *Rex v. Duckworth* (1917), 37 O.L.R. 197; *Rex v. Melvin* (1916), 38 O.L.R. 231; *Rex v. Grassi* (1914), 40 O.L.R. 359. The case was not like *Rex v. Collina* (1920), 48 O.L.R. 199, in which there was "ample admissible evidence coupled with the prima facie proof of guilt to justify the conviction" (p. 202).

The conviction should be quashed, and there should be the usual order for the protection of those concerned.

LATCHFORD, J.

NOVEMBER 20TH, 1920.

LAUGHLIN v. PORTEOUS.

Mortgage—Conveyance of two Lots of Land Subject to—Covenant—Assignment—Judgment—Indemnity—Foreclosure—Ability to Reconvey one Lot only—Inability of Covenantor Originally Liable to Meet Obligation—Effect of—Depreciated Condition of one Lot.

Action to recover from the defendants the amount of a judgment recovered by the plaintiffs against one Wilson.

The action was tried without a jury at Ottawa.

John R. Osborne, for the plaintiffs.

G. F. Henderson, K.C., for the defendants.