

D. L. McCarthy, K.C., for the defendant.

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

MIDDLETON, J., in a written judgment, said that the only question argued was, whether there was any evidence upon which it could be held that the accused was the person who kept the liquor, or who kept the premises upon which the liquor was found; or whether, in the circumstances, sec. 102 (2) of the Act applied so as to raise the presumption that the liquor was kept for sale.

The accused had filed an affidavit and produced a plan of the premises. The affidavit was not admissible. The plan seemed to have been before the magistrate. It shewed a large building subdivided by main walls into three sections, but in these walls there were doors which enabled access to be obtained to all the rooms without resort to outside communications. The east section was marked "restaurant," the centre "store," and the west "chambers."

The liquor was found in some quantity in a closet opening off a "chamber" and in proximity to the door between the "chambers" and the "store" and opposite to the door leading from the "store" to the "restaurant."

The magistrate might well find that this whole building constituted one "premises," and, in the absence of any explanatory evidence, ignore the suggestion that there were separate holdings of the different sections.

One Frank Lee at one time ran the restaurant, and imported 23 cases of spirituous liquor, and in December, 1915, he was convicted of selling liquor without a license. The liquor in question here was part of the same shipment.

The evidence here was of an officer of the police force, who "made a search of the defendant's premises at 61 Sandwich street, and found the defendant there with other Chinamen . . ." Then followed some details of search and request made of the defendant to open the door between the "store" and the "chambers." The defendant "said the man was not there that had the key. Then a man came with the key, who unlocked the door. We found nothing in the two rooms. Afterwards we asked Kee to open the door under the stairway." On this being done, the liquor was found.

On cross-examination the witness said: "On Kee seemed to be in charge of the place. I cannot say positively that On Kee is the owner of the place."