

about the rear of the premises to indicate that persons had been there with a motor car, and that some heavy articles had been taken across the fence, but there was nothing to shew that anything had been removed from the house. The marks found were equally consistent with the theory that something had been brought into the house, and there was nothing upon which to base a finding that liquor had been removed except the statement of the defendant that he had had 18 cases of liquor in his possession, and that they were gone. There was no direct evidence of any sale.

But there was evidence that the accused had had in his possession 18 cases of liquor; he admitted it at the trial. And this liquor was the liquor in respect of which he was being prosecuted. Under sec. 88 of the Act, proof of such possession is *prima facie* evidence of guilt, unless the accused proves that he did not commit the offence.

It was argued that the "possession" to which sec. 88 refers is possession at the time when search is made—that is, that there must be evidence that liquor is *found* in the possession of the accused; that evidence that the accused has previously had liquor in his possession is not sufficient.

There is much force in this argument, but the question is settled, until a higher Court holds otherwise, by the decision in *Rex v. Moore* (1917), 41 O.L.R. 372.

Section 88 really makes no reference to the "finding" of liquor in the possession of the accused; it refers merely to proof of possession.

It could not, therefore, be held that the magistrate had no evidence upon which to convict.

Motion dismissed with costs.

ORDE, J., IN CHAMBERS.

JANUARY 27TH, 1921.

*DE CAMPS v. SAINSBURY.

Practice—Writ of Summons—Ex Parte Order Authorising Substituted Service—Service on Solicitor—Application by Solicitor to Set aside Order and Service—Locus Standi—Rules 16, 217—Abuse of Process of Court Brought to Notice of Court by Officer—Costs.

An appeal by the plaintiff from an order of the Master in Chambers of the 8th January, 1921, setting aside an earlier order made by him upon the *ex parte* application of the plaintiff, authorising substituted service upon the defendant Laduke of the writ of summons.