

The case was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A., and LEITCH, J.

N. F. Davidson, K.C., for the Crown.

T. N. Phelan, for the defendant.

The judgment of the Court was delivered by HODGINS, J.A.:—In the case submitted, the Police Magistrate states that the defendant was charged with selling wood alcohol in a vessel not having affixed thereto a label bearing the words “Wood Alcohol, Poison,” in black letters not less than one-quarter of an inch in height, in violation of the provisions of sec. 372 of the Inland Revenue Act (R.S.C. 1906 ch. 51), as enacted by sec. 27 of ch. 34 of 7 & 8 Edw. VII.

In his reasons for judgment, which are part of the case, he finds that the sale is proved. This sale is, upon the evidence, contrary to the statute referred to, by which “any person who holds in possession, sells, exchanges or delivers any wood alcohol contrary to the provisions of this section (372) shall incur a penalty not less than \$50 and not exceeding \$200.”

The question to be answered is, whether the magistrate was justified in refusing to convict the defendant.

The latter did not personally make the sale, nor was he present when it was effected, but it was made in the sense hereafter mentioned to one Johnston, by the hand of the clerk of the defendant, in the latter’s hardware store in King street, in the city of Toronto, on the 10th February last. The Crown contends that the defendant is, in law, liable as the seller, although the clerk actually carried out the sale.

The principle upon which this vicarious liability is imposed is stated by Lord Russell of Killowen, in the case of *Coppen v. Moore*, [1898] 2 Q.B. 306—speaking for a special Court convened for the purpose, consisting of the Lord Chief Justice, Sir Francis Jeune, P., Chitty, L.J., Wright, Darling, and Channell, JJ. . . .

After stating the general principle of law applicable to a criminal charge, “*nemo reus est nisi mens sit rea*,” Lord Russell observes: “There is no doubt that this is the general rule, but it is subject to exceptions, and the question here is whether the present case falls within the rule or within the exceptions. . . . The greater number of exceptions engrafted upon the general rule are cases in which it has been decided that by various statutes criminal responsibility has been put upon masters for the acts of their servants. . . . The question, then,