judgment of the magistrate. But, after the decision in Rex v. Melvin (1916), 38 O.L R 231, sec 102*a*. was added to the Act, by 8 Geo. V. ch. 40, sec. 19, providing that "no conviction shall be quashed . . . on the ground that some evidence was improperly admitted . . . unless, in the opinion of the Court or Judge, some substantial wrong was thereby occasioned."

There was evidence here not only of the finding of the liquor in the house, but also that, on the occasion when the police entered, a man who was not the accused was having a meal at which he was drinking beer; that there were a large number of empty gin-bottles and beer-bottles in the place; drunken men had been seen going into and coming out of the house on several occasions; and men had been seen drinking at the table with glasses and bottles on the table. There was direct and properly admissible evidence of the foregoing facts, but there was also a good deal of hearsay evidence which the magistrate ought not to have admitted.

It was contended that the evidence as to drunken men entering or coming from the house, as to the presence of empty bottles, and as to the strange man drinking at his meal, was all irrelevant and ought not to have been admitted. The learned Judge could not agree with this view. The accused was charged with keeping liquor for sale. Having liquor in his private dwelling house was quite lawful, if not kept for sale; but, under sec. 88, the magistrate may convict of keeping for sale unless the accused can displace the presumption against him. Surely the character of the house, the frequent presence of other men and their entering or leaving the house intoxicated, the number of empty bottles, and the drinking at a meal, were all factors in assisting the magistrate to come to a conclusion. Far from being irrelevant, all such evidence was most proper and desirable in determining the bona fides of the defence, for that is really the point. The accused is prima facie guilty. All such evidence, whether adduced in support of the charge or by way of reply, is directed towards meeting or answering the defendant's denial of his guilt.

There was nothing to shew that the admission of the hearsay evidence prejudiced the accused. The magistrate finds as a fact that the accused had been selling liquor. While the magistrate also stated that the accused had been selling liquor under the guise of refreshments, and had been carrying on a restaurant business without a license—statements justified only by the hearsay evidence—it could not be gathered from the magistrate's judgment that he based his finding of fact upon which he adjudged the defendant guilty, on the hearsay evidence.