

witness acknowledged. I asked to put it in as an exhibit, but it was refused by the Justices. Hereunto annexed, marked exhibit A., is the telegram referred to. No reference to the same appears in the proceedings before the Justices." The telegram is made an exhibit to the affidavit and reads as follows: "Harrow, 12. 2. 1911. C. J. Stogell, Walkerville, Ontario. Please send me bottle Imperial whisky first train. Perry Lipps." Counsel for the Crown objected to the admission of this affidavit; but, even if it were admitted, I do not think it carries the case much farther. O'Connor assumed to hand over the bottle and take the pay for the liquor under the circumstances in question. I think he acted in the matter more than in the mere capacity of a telegraph operator. If Lipps had come there, and, without discussion, had written out the telegram himself and handed it to the operator, that might be a different matter. I think the evidence sufficient to warrant the Justices in the conclusion that O'Connor did receive an order and place it with Stogell.

But a third objection was taken to the conviction, on the ground that, when the amendment to the information was made on the 8th January, 1912, it was too late. Section 95 of the Liquor License Act provides that "all informations or complaints for the prosecution of any offence against any of the provisions of this Act, shall be laid or made in writing (within thirty days after the commission of the offence or after the cause of action arose and not afterwards)," etc.

In this case the information was first laid on the 27th December for an alleged violation of the Act on the 27th November, 1911. The information was then amended on the 8th January, 1912, and a different and substituted charge laid for an alleged violation of the Act on the 2nd December, 1911. Section 104 provides as follows: "At any time before judgment, the Justice, Justices, or Police Magistrate may amend or alter any information, and may substitute for the offence charged therein any other offence against the provisions of this Act; but if it appears that the defendant has been prejudiced by such amendment, the said Justice, Justices or Police Magistrate shall thereupon adjourn the hearing of the case to some future day, unless the defendant waives such adjournment."

The contention of the accused upon this application is, that sec. 104 did not empower the Justices to amend the information in such a way as to substitute a different offence for the one originally charged, unless it were done within thirty days from the date of the commission of the offence, and in any event not