

and that under the facts as proved there was in fact no sale or barter of the liquor. In my opinion he is not at liberty to shew this in the face of the enactment contained in these sub-sections. Under them proof of consumption of liquor in the premises of the club by a member of the club is made conclusive evidence of the sale of the liquor, and the defendant as a member of the club must be taken conclusively to be the person who keeps therein the liquor for sale. There seems to me to be no escape from this conclusion, and I do not think it open to the defendant to controvert it. "Conclusive evidence" is thus defined in Stroud's Judicial Dictionary: "Anything which is duly prescribed as 'conclusive evidence' of a fact, is absolute evidence of such fact, as well criminally as civilly for all purposes for which it is so made evidence;" and in support of this definition are cited the cases of *Reg. v. Levi*, 34 L.J.M.C. 174, and *Reg. v. Robinson*, L.R. 1 C.C. 80.

These are both cases under the Bankruptcy Act, 12 & 13 Vict., c. 106, s. 233, which enacted that the *Gazette* containing the advertisement of the adjudication of bankruptcy should be conclusive evidence in all cases against the bankruptcy of the adjudication. The Courts held that, notwithstanding any irregularities there might have been which otherwise would have invalidated the adjudication, the advertisement in the *Gazette* concluded the matter.

In the case of *Re Brynmawr Coal Co.*, W.N. (1877) 45, it was held that, as s. 51 of the Companies Act 1862 made the declaration of the chairman that the voluntary resolution of the company for liquidation had been duly passed conclusive evidence of the fact, it could not be shewn (though the fact was so) that there was not a majority, in accordance with the statute, of votes present. It was so held also in the *Gold Company's Case*, 11 Ch. D. 701, more fully reported in 48 L.J.N.S. Ch. 281, and in the case of *In re Hadleigh Castle Gold Mines*, (1900) 2 Ch. 419.

I am of opinion that the defendant must be convicted of a violation of sec. 50 of the Liquor License Act. I am unable to agree with the contention on the part of the defendant that the provisions of the sub-s. of sec. 53 are ultra vires of the Legislature of Ontario. They are not, in my judgment, any greater interferences with, or restrictions upon the liberty of the subject than many other provisions of the law which have been held to be intra vires.

It was argued that the penalty applicable to this case is that prescribed by s. 72 of the Act; but I do not think so. The penalties under that section are not applicable to violations of s. 50, but are confined to violations of s. 49, the selling of liquor. Sec. 86 provides the penalty for such a case as this, and that penalty is directed to be for the first offence, not less than \$20, besides costs, and not more than \$50, besides costs.

As I believe that the defendant had no intention of violating the law, and acted in ignorance that he was doing so, I think that I should impose the lowest penalty, and so I direct he shall forfeit and pay a penalty of \$20, besides costs.