

Motion to quash the conviction of the defendant, by the Police Magistrate for Essex, for that the defendant did, on the 22nd November, 1920, at the village of Belle River, in the county of Essex, unlawfully sell or dispose of 150 cases of liquor contrary to the provisions of the Ontario Temperance Act. The defendant was fined \$2,000 and costs, and, in default of payment of the fine, it was directed by the conviction that he should be imprisoned in the common gaol for 3 months.

J. M. Bullen, for the defendant.

F. P. Brennan, for the magistrate.

MIDDLETON, J., in a written judgment, said that in June, 1920, the defendant purchased 150 cases of whisky for his personal use. This was taken to his dwelling house and stored by him there. There did not appear to have been anything clandestine in the purchase of this liquor. The inspector under the Act, being suspicious as to the bona fides of such a large purchase, frequently visited the defendant's premises. In November he made an inspection and found that the stock of whisky was intact except some 8 cases which had been used by the defendant. The defendant and his wife were absent from their house from the 10th to the 12th November, 1920. When they got back they found that the house had been broken into, and that the 142 remaining cases of whisky were missing. The defendant was then prosecuted for selling the liquor. The evidence for the Crown was that of the inspector, who had called at the house and seen the liquor there on many occasions. He testified that until the 142 cases disappeared there was nothing to complain of—the liquor was being consumed by Mooney personally. Mooney admitted that he had the liquor; and that was the whole of the evidence for the Crown. The defendant testified to the purchase of the liquor, his reason for buying it, and explained all the circumstances. He emphatically denied selling or violating any provision of the Act. He was corroborated by his wife, and evidence of his high character was given. No evidence was given in reply.

At the close of the case the magistrate said that he believed the evidence of the defendant's wife, but there was very little evidence on one side or the other. He added that the defendant and his wife were negligent in leaving 142 cases of liquor in their house while they were away. He postponed his decision for a few days, and then gave judgment finding the defendant guilty and imposing punishment as above.

The theory of the Crown was that the whisky was bought for the purpose of being sold, and that the supposed robbery was