The motion was heard in Chambers at the London Weekly Court.

N. P. Graydon, for the defendant.

J. B. McKillop, for the complainant and the Justices.

CLUTE, J., in a written judgment, set forth the objections to the conviction and portions of the evidence taken by the Justices. He then said that the first question that arose was, whether the conviction disclosed a crime by simply declaring that the prescriptions were given in evasion or violation of the Act, without saying in what manner they violated the Act. The portion of sec. 51 which declares that every physician who shall give such prescription in evasion or violation of the Act shall be guilty of an offence, would seem to make that an offence without stating what the act is which constitutes the offence.

There is an evasion or violation of the Act where a physician gives a prescription when he does not deem the liquor necessary for the health of his patient, or gives the same (1) to enable any person to evade the Act; or (2) to obtain liquor as a beverage; or (3) to be sold in violation of the Act.

It thus appears that the physician is the person to judge, in the first instance, whether the liquor is necessary for the health of his patient. If he deems it so, there is no offence under the Act.

In this case there was not a tittle of evidence that the prescription was given in any case in evasion or violation of the Act. The accused swore that in every instance he deemed it necessary, and in no instance did he prescribe it when not necessary.

The prosecution asked for a conviction upon the inference to be drawn from the number of prescriptions given within the time. The number given might raise a suspicion in one's mind, but was no evidence in proof of the fact.

Other objections to the conviction were formidable, but it was unnecessary to consider them. The motion should be disposed of upon the ground that there was no proof whatever of any offence under the Act.

The conviction should be quashed without costs.