

and that I did, after hearing the evidence of all the parties in the said case, order that the liquor concerned in the said prosecution, amounting to 36 cases, be confiscated."

On the 18th September, 1920, notice of a motion to quash this order was served upon the magistrate, and on the 20th September the notice was served upon the inspector who had laid the information.

There was no evidence and no record that the defendant or any other person had been convicted in respect of the liquor referred to in the information, and there was consequently no foundation, under secs. 66, 67, and 68 of the Act for the magistrate's order confiscating the liquor. Nor could sec. 70 be appealed to in support of the order. There was nothing in the transcript of the evidence, which, in the proceedings before the magistrate, was taken down in shorthand, or in the record, in any way indicating that the proceedings before the magistrate were taken under sec. 70, or that the defendant was summoned under it.

In any view of the matter, no foundation had been laid for the confiscation order.

The defendant, however, was confronted with the fact that the notice of the present motion, though bearing a date within 30 days from the date of the order complained of, was not served within 30 days, as required by sub-sec. 2 of sec. 102 of the Act. Sub-section 2 was added by the amending Act of 1917, 7 Geo. V. ch. 50, sec. 33, and provides: "No motion to quash a conviction or order made under this Act shall be heard . . . unless notice of such motion has been *served* within 30 days from the date of the conviction or order."

Though counsel opposing the motion had not insisted on this irregularity, that could not override the requirements of sub-sec. 2 or confer jurisdiction upon the Court or Judge to hear the motion.

The motion should, therefore, be dismissed, but, in the circumstances, without costs.

The result was that, although the learned Judge could not interfere with the order, the liquor had been confiscated without any authority under the Act, and the defendant had been deprived of what had not been shewn not to have been his property.