

Sandwich, imported 110 cases of whisky, each case containing 12 quarts. The whisky was seized, and the defendant was called upon, under the Ontario Temperance Act, to shew cause why it should not be destroyed. He succeeded in convincing the magistrate (the same one who afterwards made the above conviction) that the whisky was not intended to be sold or kept for sale or otherwise in violation of the Act, and the whisky was accordingly delivered to him at the end of November. He stored it in his house; and it was probably well known in the neighbourhood that he had been laying in a considerable stock.

On the 27th December, the defendant told the license inspector that, on Christmas eve, 15 men had attempted to take his whisky from him, but had been frightened away. Later, the whisky, or all of it but some 18 or 20 bottles, which the defendant said he had consumed, was removed from the house. The defendant said that it was stolen on New Year's day; but the Crown charged that the removal was with the concurrence of the defendant, and constituted the unlawful sale or disposal of which he had been convicted.

The learned Judge set out the evidence given before the magistrate, as to what was said to have occurred at the defendant's house on Christmas eve and on New Year's day.

The conviction quoted above, which was in the exact words of the information, was defective in that it did not state an offence against the Ontario Temperance Act. The words "contrary to the Provincial Act of section 41 of the Ontario Temperance Act" may be supposed to mean "contrary to the provisions of section 41 of the Ontario Temperance Act;" but sec. 41 does not relate to selling or disposing of liquor: it relates merely to having or giving liquor in a place other than a private dwelling house. It is sec. 40 which makes it an offence to sell; and it must be supposed that what was intended was to charge the defendant with and convict him of a breach of sec. 40. The conviction was, therefore, bad on its face. It seemed also to be open to the objection that it is in the alternative—"did unlawfully sell or dispose of"—see *Rex v. Kaplan* (1920), 47 O.L.R. 110.

The conviction being bad on its face, the question to be determined was, whether a case was made out for the application of sec. 101 of the Act and for the amendment of the conviction.

It could be understood from the conviction that it was made for an offence against a provision of the Act within the jurisdiction of the magistrate. The inquiry, therefore, should be, whether there was evidence to prove an offence under the Act.

Proof was given that the defendant had had in his possession the liquor in respect of which he was prosecuted. Therefore, by sec. 88, it was open to the magistrate (subject to the objection