license therefore by-law required. The prosecution was under s. 53 of the Act relating to clubs.

The material facts of the case, as proved by admissions and evidence, were that the respondent was, at the time of the alleged contravention of the law, the president and member of a club, association or society called "The Cobourg Whist Club," which consisted of thirteen members. The club rented a room in the Horton Block from the respondent as agent of his wife, (who was the owner), and used this room for the purposes of its meetings. No person except members of the club had any right to use the room. Each member upon joining was furnished with a key to the room, and so had access to it. There were no rules or regulations in writing, but on the formation of the club it was agreed between the members that all should contribute to a fund for the purchase of spirituous liquors and ale and cigars, and that out of that fund the respondent, as president, should procure and keep in the room a supply of liquors, ale and cigars for use and consumption by the members, and that he should have the care and control of these supplies. These contributions were made, and the respondent procured a supply of liquors, ale and cigars, which was kept by him in the club's room. The members who chose to do so used these supplies. There was evidence that each member could help himself and pay for what he used, and other evidence was that the money contributed by those who used the supplies was to go to the fund for the purchase of renewal supplies. The club was not incorporated, and neither the club nor any member of it was licensed under the Act. It was clear that on the occasion of the alleged contravention liquor was kept by the respondent, as president of the club, in the club's room for intended consumption by the members of the club, and was in fact consumed by members of the club, and that some members put money in the place appointed for its reception as their contributions to the liquor fund.

Armstrong, for the respondent. There was no keeping of liquor in the room for sale or barter, and so no violation of the Act; and there could be no sale, as the liquor belonged to the club, and one member could not sell to another. *Graff* v. *Evans*, L.R. 8 Q.B.D. 373, and *Newell* v. *Hemmingway*, 58 L.J.N.S.M.C. 47, are relied on.

McColl and *Keith*, for the appellant, contra.

BENSON, Co. J.—I have not been referred to, nor have I found any case decided upon the provisions of s. 53 of the Act, as they now exist. *Reg.* v. *Austin*, 17 O.R. 743 was a decision under sub-s. 1 of s. 53 in its old form, when its application was to a club formed or carried on specially or chiefly for the purpose of enabling it to sell liquor to its members or to others without a license, and so as by means of such organization to evade the operation of the Act; and the magistrate having found that the club was formed or carried on specially or chiefly for the