

On search it was found that the defendant had a bottle of gin under his mattress.

Section 41 of the Ontario Temperance Act, 6 Geo. V. ch. 50, is: "Except as provided by this Act, no person . . . shall have or keep or give liquor in any place wheresoever, other than in the private dwelling-house in which he resides, without having first obtained a license under this Act authorising him so to do. . . ."

J. Haverson, K.C., for the defendant.

J. R. Cartwright, K.C., for the Attorney-General.

MASTEN, J., said that the motion turned on the meaning of "private dwelling-house." Defined by sec. 2 (i) of the Act, it is: "a separate dwelling with a separate door for ingress and egress, and actually and exclusively occupied and used as a private residence."

The car was not used as a private residence only; it was also used as a means of transport, and was therefore not used "exclusively" as a private residence.

Nor was it "private," because others besides the four might use it to eat and sleep in, if the company so ordered.

Nor was it a "house"—it did not become a house when it ceased to move.

Again, the magistrate had found as a fact that the car was not a private dwelling-house; and that finding could not be reviewed upon a motion to quash the conviction.

Motion refused, but, in view of the importance and general interest of the case, without costs.