

The motion came on for hearing in Chambers at Toronto. M. H. Roach, for the prosecutor, took the preliminary objection that the motion was out of time.

J. B. Mackenzie, for the applicant.

MEREDITH, C.J.C.P.:— . . . In sec. 25, ch. 82, 9 Edw. VII. (Ontario), "An Act to amend the Liquor License Act," a special limitation was put upon the time within which a motion to quash a conviction made under the Liquor License Act could be heard: the section is in these words: "No motion to quash a conviction or order made under this Act shall be heard by the Court or Judge to which such application is made unless notice of such motion has been served within twenty days from the date of the conviction or order."

It was admitted, on all hands, that service of the notice of this motion upon each of the two magistrates who made the conviction, as well as upon the prosecutor, was necessary; and that the 24th July was the last of the twenty days "from the date of the conviction."

But it was contended for the applicant that there was no power to make such conviction under the Liquor License Act; and, therefore, the case could not come within the meaning of the legislation I have read. But why not? Good, or bad, it is a conviction expressly made under the Act. The information was laid, and the whole prosecution carried on under and in accordance with its provisions, for an offence throughout expressly stated to have been committed in contravention of the provisions of the Act; and now the whole proceedings taken on this motion have been taken expressly to quash a conviction for an offence committed "contrary to the provisions of the Liquor License Act." I am unable to find anything substantial in this point, and so must deal with the case as one within the meaning of such legislation: see *People ex rel. Springsted v. Board of Trustees of Village of Cobleskill* (1892), 20 N.Y. Supp. 920; and *People ex rel. Cook v. Hildreth* (1891), 126 N.Y. 360.

The onus of proof of service of the notice of motion is upon the applicant, but he has failed to give any direct evidence of service upon any one but the prosecutor.

His story is, that the notices reached him on the morning of the 24th July, and that he then served one copy upon the prosecutor; gave another copy to a girl in Beaverton to give to one of the magistrates, near whom she lived, a long way from Beaverton; and the third to another girl, in Beaverton, to give to the other magistrate, with whom she lived, and for whom