HON. MR. JUSTICE LATCHFORD:—A witness named McDonald deposed that he bought a bottle of whiskey from McElroy, paying $1.25 for it. This is the only evidence of the purchase. On cross-examination McDonald put the matter in quite a different way. He said: "I gave $1.25 to McElroy to get me a bottle. . . He got the liquor.'

It is contended on behalf of McElroy that the two statements must be taken together—the first as explained by the second—and accordingly that McElroy was but the agent or messenger of McDonald and not liable to conviction: *Rex* v. *Davis* (1912), 23 O. W. R. 412. Before the magistrate such an argument would no doubt have great force, and it might be effective before me were I sitting in appeal from his decision, but as I have to be convinced before I can quash the conviction that there was no legal evidence of a sale, the contention fails. There was undoubtedly some evidence of a sale. The magistrate believed that evidence, and rejected all evidence to the contrary. He did not credit what the witness said on cross-examination, and accepted his evidence in chief—and that evidence warranted the conviction.

The motion must be dismissed with costs.