

impaired if no clause with regard to it be inserted. The date of the opening of court is fixed, and litigants must be ready for trial on that day. Defendant is therefore entitled to tax items claimed, except fee with brief at trial.

*P. McCarthy*, Q.C., for plaintiffs. *James Short*, for defendant Henderson.

Scott, J., Rouleau, J.] REGINA *v.* MONAGHAN. [Dec. 7, 1897.

*Indian Act—Certiorari—Stated case—Res judicata.*

The defendant had been charged on an information and convicted under R.S.C. c. 43, s. 94, "for that he did sell to an Indian intoxicating liquor," etc. At the close of the evidence, defendant's counsel objected that two offences were charged. After consideration the magistrates drew up the conviction as above. The defendant thereupon applied for, and obtained a stated case, under s. 900 of the Criminal Code, which was heard before Mr. Justice Scott, who held that to give and sell were not two offences, and affirmed the conviction. The magistrates having transmitted the conviction and proceedings to the Clerk of the Court at Macleod, under s. 801 of the Crim. Code, the defendant applied for and obtained from a single Judge a rule nisi returnable before the full Court, sitting en banc at Regina, asking that the conviction be quashed on the same grounds as were taken on the stated case, and a direction was given to the Clerk at Macleod to transmit the conviction, etc., to the Registrar of the Court at Regina, which he did.

On the return of the rule nisi at the sittings of the full Court at Regina on Dec. 6, 1897, counsel for the private prosecutor and for the magistrates took the preliminary objection :

1. That the conviction, etc., were not regularly before the Court, not having been brought there by a writ of certiorari, and the same could not be examined into, or dealt with.
2. That a single judge under s. 900, sub-sec. 9, being vested with all the authority and jurisdiction of the Court, and having sustained the conviction, from which decision there was no appeal, the question was *res judicata*, and the conviction could not now be quashed on the same grounds as were taken on the stated case.

*Held*: 1. By SCOTT and ROULEAU, JJ., That the conviction, etc., were regularly before the court, and could be dealt with, and that a writ of certiorari was not necessary, following *Reg. v. Wehlan*, 45 U. C. R., 396.

2. By RICHARDSON and WETMORE, JJ., That the conviction, etc., were not regularly before the court, and that a writ of certiorari to bring them before the court was necessary, following *Reg. v. McAllan*, 45 U. C. R., p. 402, and distinguishing *Reg. v. Wehlan*.

3. By the full Court, That the grounds now taken on which to quash being the same as those taken and disposed of by a single Judge on the stated case, the matter was *res judicata*.

Rule nisi dismissed with costs.

*Costigan*, Q.C., for defendant. *Muir*, Q.C., for the magistrates and for the prosecutor.