

entrance into said district contrary to the provisions of the Public Health Act."

Held, that the conviction was bad in that it charged two separate offences against the Health Act, in support of one of which (obstruction of the officer) there was not a particle of evidence in the record.

R. W. McLellan, for complainant. *O. S. Crocket*, for defendant.

En banc.]

EX PARTE DEAN.

[June 17.

Order without hearing--Appeal--Certiorari.

The Judge of the Saint John County Court made an order under 59 Vict. c. 28, s. 48, committing the applicant to prison for three months, because, after his arrest in a civil suit in the St. John County Court, he had made an appropriation of property in payment of another debt without paying the debt sued for. The Judge based the order upon evidence, which the applicant had given upon the trial of the action, and not upon any hearing upon the application for the order under the provisions of the Act referred to. The order did not set out the ground upon which it was granted.

Held, on motion to make absolute a rule nisi for certiorari and to quash, that, notwithstanding the provisions of 59 Vict. c. 28, for appeal, a certiorari ought to be granted under these exceptional circumstances.

Held, also, that the order was bad, there having been no hearing of evidence upon the application therefor, and the grounds upon which it was granted not being set out therein.

A. W. McRae, in support of rule. *E. P. Raymond*, contra.

En banc.]

EX PARTE BERTIN.

[June 17.

Liquor License Act--Conviction--Payment of part of penalty--Warrant of commitment--Certiorari.

The applicant was convicted for selling liquor without license contrary to the Liquor License Act, 1896, and fined \$50.00 and \$6.00 costs, in default of which he was ordered to be imprisoned. A few days after the conviction he paid the magistrate the costs. Subsequently the magistrate issued a warrant of commitment, under which the applicant was arrested and imprisoned. The Supreme Court granted a rule nisi for a certiorari and a rule nisi to quash the conviction, and "all the proceedings on which the same was based, and all the proceedings had thereon."

Held, on motion to make the rule absolute,—without deciding as to the legality of the imprisonment under the commitment after the costs had been paid without an offer to pay them back,—that the conviction could not be attacked upon this ground and that certiorari would not lie to remove the warrant of commitment.

Barry, K.C., in support of rule. *J. P. Byrne*, contra.