That the appellant is an Indian was sufficiently proved at the "trial"—if such the proceedings before the magistrate could be fairly called; and, if it had not been so proved, there was no good reason why it might not be satisfactorily proved in these proceedings.

An Indian who commits an offence against a provincial law, beyond the limits of an Indian reserve, may be convicted, and punished just as all other persons may: Rex v. Hill (1907), 15 O.L.R. 406; Rex v. Beboning (1908), 17 O.L.R. 23.

That being so, the appeal fails altogether; it is not open to the Court to entertain the appeal upon the other grounds relied upon by counsel for the appellant; they do not involve the question of jusridiction mentioned.

A considerable time after the hearing of the appeal, and after the Chief Justice's reasons (above summarised) had been written, the Attorney-General consented to the question whether an Indian is liable to the penalties of the Ontario Temperance Act being considered by the Court. Referring to the consent, the Chief Justice said that, for the reasons above given, he did not think that any consent or certificate was necessary, and so did not stop to inquire whether such a consent or certificate was a compliance with sec. 95 of the Act.

The appeal should be dismissed.

RIDDELL, J., also read a judgment, in which he said that (regarding the consent of the Attorney-General as a sufficient certificate) the Court was bound by Rex v. Hill, 15 O.L.R. 406, to hold that an unenfranchised Indian was subject to provincial legislation in precisely the same way as a non-Indian, at least where, as here, he was out of his reservation.

He was also of opinion that legislation such as the Ontario Temperance Act is not legislation concerning Indians: Canadian Pacific R. W. Co. v. Corporation of the Parish of Nôtre Dame de Bonsecours, [1899] A.C. 367, 372.

The defendant being no longer in custody, habeas corpus does not lie: In re Bartels, [1907] 15 O.L.R. 205.

LENNOX and ROSE, JJ., agreed in the result.

Appeal dismissed with costs.