

Court should not, upon a case reserved, affirm a conviction, because, in the opinion of the Court, there is sufficient good evidence to support a verdict, where material evidence has been improperly received.

J. W. Longley, Q.C., Attorney-General, for Crown.

C. S. Harrington, Q.C., for defendant.

Province of New Brunswick.

SUPREME COURT.

Full Court.]

EX PARTE THOMAS PATCHELL.

[April 27.]

C. T. A. conviction—Sale to soldiers—Exemption.

Held, that a sale of liquor at the canteen of No. 4 Co., Royal Regiment of Canadian Infantry, at Fredericton, by a waiver thereof, to a member of the 71st Battalion in uniform, during the period when said battalion was assembled in camp for annual drill, was exempt from the operation of the Canada Temperance Act, said canteen having been established and being managed as provided by s. 15 of the Queen's Regulations, to which regulations the Court held the R.R.C.I. corps was subject, as well as the 71st Battalion, during the period of their annual drill. Vide s. 28 Militia Act, sub-sec. 3, and ss. 63, 73, 7. and 82; also Queen's Regulations, s. 17.

Rule absolute for certiorari to remove conviction.

A. J. Gregory, in support of rule.

C. W. Beckwith, contra.

Full Court.]

EX PARTE QUIRK.

[April 27.]

C. T. A. conviction—Service of summons—Prima facie evidence thereof.

Application for certiorari to remove a conviction under the C. T. Act on the ground of insufficient service or for want of service of the summons. The constable went to residence of defendant in the county where the offence was committed and knocked at the door. A young woman opened a window and asked him what he wanted. He said he wanted to see defendant. She replied that defendant was not home. The constable then said he had a paper for defendant, whereupon the young woman left the window and the constable threw the paper (copy of summons) into the room through the window. This was on Dec. 1st, 1896. The constable swore to these facts on the return of the summons on Dec. 4th, and also that he had tried to open the outside door of defendant's house at the time of service, but could not do so, and that the young woman appeared to be over sixteen years of age. He also swore that he had been at this house on a previous occasion on other business, and this same young woman had spoken of defendant as her mother. After taking the evidence of the constable the Justices adjourned the Court until Dec. 11th, and afterwards sent a registered letter to defendant containing a notice that the trial had been so adjourned. On Dec. 11th the Court again met and proceeded with