

Province of New Brunswick.

SUPREME COURT.

EN BANC]

[Nov. 6, 1895.

EX PARTE GORMAN.

Canada Temperance Act—Rule nisi for certiorari—Error in proceedings.

Upon an application to make absolute a *Rule nisi* under the Canada Temperance Act, it appeared that in both the adjudication and the conviction the word "days" was omitted after "forty-five."

The Court made the rule absolute, holding that they had no power to amend the nature of the adjudication.

Teed in support of Rule.

Chandler, contra.

TUCK, J., }
In Chambers }

[Dec. 23, 1895.

EX PARTE LEGER.

Case on review—Dismissed without hearing on merits—Power to award costs.

L. was convicted of having sold meat contrary to the by-laws of the Town of Moncton, and a penalty imposed. L. obtained an order for review from Wells, Co. J. At the return of the order the matter was dismissed with costs because of a defective affidavit, without the merits of the case being reached.

On the return of a summons to show cause why an order *nisi* for *certiorari* should not be granted on the ground that Wells, Co. J., had no power to grant costs, as the conviction was neither affirmed nor reversed.

Held that the Judge on review had such power.

Bustin v. Howell, 1 All., 596, referred to.

A. G. Blair, Jr., for Leger.

Grant, contra.

VANWART, J. }
In Chambers }

[Dec. 24, 1895.

EX PARTE MCCLEMENTS

Criminal Code—Fine and imprisonment—Power to award both.

M. was convicted at the County Court sittings of having assaulted a peace officer, and the presiding Judge imposed a fine of \$50, and also sentenced M. to one month in jail. Sec. 263 of the Criminal Code provides that "everyone is guilty of an indictable offence and liable to two years' imprisonment who assaults any public or peace officer, &c." A habeas corpus order to show