A. E. G. McKenzie, for the informant, shews cause against the order nisi to quash.

J. D. Phinney, K.C., for the defendant, in support of the order nisi.

The judgment of the Court (BARKER, C.J., LANDRY, MCLEOD, WHITE, BARRY and MCKEOWN, JJ.) was now delivered by

BARKER, C.J.: — On an information laid before the magistrate against Belliveau, he was convicted and fined for a violation of section 135 of "The Indian Act (cap. 81, Rev. Stat. Can. 1906). That the offence was actually committed there does not seem to be any doubt. The first objection raised was that the magistrate was without jurisdiction because the information was in fact based only on information and belief, and the magistrate made no preliminary examination into the facts as is necessary in such a case to justify the issue of a warrant. The distinction between an illegal procedure by which the accused is brought before the magistrate and the jurisdiction to hear the charge after he is there is pointed out in Rex v. Hughes (4 Q. B. D. 614) in which case the conviction was sustained though the accused had been brought before the magistrate on a warrant issued without any information or oath of any kind on which to found it. In the present case, it is not necessary to go that far, for the information was in fact positive on its face and not on information and belief at all. It is true that at the hearing the informant admitted that he really had no personal knowledge of the commission of the offence and that he, in fact, based the charge on his information and belief. The magistrate, however, acquired the jurisdiction to issue the warrant by a sworn and positive information, and he could not lose it by any such evidence as that which is relied on. The informant may have incurred some liability or penalty by his carelessness or recklessness, but the magistrate's jurisdiction to hear the charge would not be taken away.

Another objection is that the conviction does not order the costs of commitment to be paid, or direct to whom the costs ordered to be paid are to be paid. In this case we are, by consent of the parties, dealing with a copy of the conviction furnished to the accused for his motion for a certiorari, the original minute, connection and papers having all been destroyed in the fire which occurred in Campbellton in