

which justice and fair dealing required them to recognise. I can find nothing in the whole case to warrant any such charge.

There will be a nonsuit entered pursuant to leave reserved.

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### NEW BRUNSWICK.

SUPREME COURT, EN BANC.

NOVEMBER 18TH, 1910.

*REX v. MATHESON, EX PARTE BELLIVEAU.*

*Intoxicating Liquor—Selling to Indian—R. S. C. 1906 c. 81—Magistrate — Jurisdiction — Irregularity in Conviction not Including Certain Costs—Amendment.*

Conviction of the defendant, Belliveau, by Police Magistrate Matheson, for selling intoxicating liquor to an Indian in violation of "The Indian Act," before this Court on certiorari and order nisi to quash, granted on the following grounds:—

1. The magistrate had no jurisdiction to hear the matter and adjudicate thereon, inasmuch as the warrant under and by virtue of which the applicant and accused was arrested was issued by the magistrate without authority nor jurisdiction on his part, he, the magistrate, not having conformed himself to section 655 of the Criminal Code.
2. The warrant for the arrest of the defendant and applicant, Frank Belliveau, was issued on the information of the informant, Robert Crawford, pledging his belief only as to the facts therein set forth, as appears by the evidence; therefore the defendant having been brought before the magistrate under a warrant issued improperly and without jurisdiction, the magistrate acquired no jurisdiction over the person of the accused.
3. The magistrate had no jurisdiction nor authority to enter up the conviction he did, inasmuch as the costs of commitment are not included in said conviction.
4. The conviction is not authorized by any Act, inasmuch as it does not follow the form prescribed by the Criminal Code, and it does not state to whom the costs shall be paid.

Argued during September sittings, 1910.