

REX v. BENNETT

(1930), 55 C.C.C. 27

Ontario County Court, Denton Co. Ct. J., 23 June 1930

*Intoxicating Liquors III D 3--Offences--Selling--Prohibited persons-- Native wine—Indian--
Defence, appeared to be Japanese--View by County Court Judge on review.*

A person who sells native wine to an Indian believing him to be Japanese, is properly convicted under the Indian Act.

[*Rex v. Pickard*, 14 Can. C.C. 33, folld, *Rex v. Verdi*, 23 Can. C.C. 47, apld.]

APPEAL by accused from his conviction by Jones, P.M., for selling liquor to an Indian. Affirmed.

F. T. Watson, for the accused.

E. N. Armour, K.C., for the Crown.

DENTON, CO. CT. J.:--This is an appeal from a conviction by Jones, P.M., dated March 14, 1930, for unlawfully selling an intoxicant to one, Jack Post, an Indian, contrary to the Act respecting Indians, R.S.C. 1927, c. 98, s. 126(a).

It was admitted on the argument that Jack Post is an Indian and that the accused sold wine to him, and that wine is an intoxicant within the statute. It is also agreed that the evidence taken before the Magistrate should be treated as the evidence on the appeal.

The only defence raised is that the accused did not know or believe or suspect him to be an Indian. It is said that the accused thought he was a Japanese. The hearing of the appeal was adjourned in order that the Indian might be brought before me. This has been done. He is typically Indian in appearance, and I do not see how the accused could have very well taken him for other than an Indian. Certainly his appearance would at least cause the accused to suspect him to be an Indian. Under those circumstances, *Rex v. Pickard* (1908), 14 Can. C.C. 33 and *Rex v. Verdi* (1914), 23 Can, C.C. 47, applies, and the appeal must be dismissed.

Appeal dismissed.