

REX v. McHUGH

(1907), 13 C.C.C. 104 (also reported: 13 B.C.R. 224, 7 W.L.R. 252)

British Columbia Supreme Court, Hunter C.J., 18 December 1907

Ex officio justice of the peace--Indian agent with powers of two justices under the Indian Act--Territorial jurisdiction must appear on war- rant of commitment--Indian Act R.S.C. 1906, ch. 81, sec. 135--Revised Cr. Code, sec. 739.

1. A warrant of commitment for an offence against the Indian Act made by an "Indian agent" exercising the powers of two justices should shew on its face the district for which he was an Indian agent as he had jurisdiction by virtue of that office only in the district for which he was appointed.

ARGUED: December 18, 1907.

DECIDED: December 18, 1907.

Application for a writ of habeas corpus on the ground that no jurisdiction was disclosed on the face of the warrant.

The prisoner was confined in the Provincial gaol at Victoria under a warrant dated the 10th of December, 1907, by W. M. Halliday, a justice of the peace for the County of Nanaimo and the warrant recited the fact that the prisoner was on the said date "convicted before the undersigned, one of His Majesty's justices of the peace in and for the said District or County of Nanaimo, for that he the said Michael McHugh did at Campbell River in the County of Nanaimo on Sunday, December the eighth instant, unlawfully supply an intoxicant to wit: gin to an Indian of the Salmon River Tribe," The warrant was signed:

"W. M. HALLIDAY,

"*J. P., Indian Agent.*" Lowe, for the motion, cited *Regina v. Ackerman* (1883), 1 B.C. (Pt. 1), 255; 2 Hawk. P.C. ch. 16, sec. 13; 2 Hale P.C. (105) R. v. MCHUGH 579 122; *In re Peerless* (1811), 1 Q.B. 143; *Christie v. Unwin* (1840), 11 A. & E. 373 at pp. 378-9; *Johnston v. O'Reilly* (1906), 12 Can. Cr. Cas. 218; *Regina v. McAuley* (1887), 14 Ont. R. 643. Under section 135 of the Indian Act, R.S.C. 1906, c. 81, two justices or an Indian agent can convict. If the warrant and conviction is by an "Indian agent" it should specify his juris- diction by shewing for what district he acted as Indian agent.

Helmcken, K.C., contra.

VICTORIA, December 18, 1907.

HUNTER, C.J.:--Inferior Courts must shew their jurisdiction on the face of their warrants. In this case the mere addition of the words "Indian agent" to the signature was not sufficient, but the justice should have specified the district for which he was Indian agent in the body of the commitment, as it is only by virtue of his office as Indian Agent that he had juris- diction.

Application granted.