

The order nisi to quash must be discharged.

WHITE, J.:—As the statute requires the information, which is the foundation of the magistrate's jurisdiction, to be laid within three months of the date of the offence, the justice has no power to take such information after the lapse of that statutory limit. But the statute does not require the summons to be issued forthwith upon the laying of the information, or within any fixed period thereafter. Hence the only restriction as to the time within which the summons must be issued is that it shall be issued within a reasonable time. What is a reasonable time, is a question of fact dependent upon the circumstances of the particular case; and accordingly, in *Potts v. Cumbridge*, 8 E. & B. 847, a delay of twelve months in the issue of summons was under the circumstances of that case held not to have been unreasonable. But this question of fact the magistrate is of necessity called upon to determine before issuing summons in every case where the information has not been followed promptly by such issue. By the Canada Temperance Act certiorari is taken away. Hence we cannot entertain a motion to quash the conviction unless the magistrate appears to have acted without jurisdiction. To hold that the magistrate, who has bona fide exercised his judgment in deciding a question which the law imposes upon him the duty of determining, shall be deemed to have acted without jurisdiction merely because this Court may consider he came to an erroneous conclusion upon the facts, would, I think, by importing into the law a dangerous principle which would make so hazardous the exercise by a magistrate of the judicial duties vested in him that no prudent magistrate would be willing to assume the risk, for it is well settled that a conviction obtained before a justice who acts without jurisdiction affords him no protection in an action against him for an arrest made under warrant founded upon such conviction.

A case is easily conceivable when the delay and attendant circumstances would be such as to make it clear that no justice could by any honest exercise of judgment have come to the conclusion that the delay was reasonable; and in such a case the justice might well be held to have acted without jurisdiction. But this is not such a case. Although we may think,—as indeed I am disposed to do,—that the magistrate erred in coming to the conclusion he did, as to the reason-