the inspector had employed to make out the papers did not do so. The inspector had other work to do on his farm and could not attend to the prosecution. In October, 1909, he saw the magistrate who said he had not received the papers. At the councillors' election a new board had been elected, only four of the old members being returned, and the inspector thought it best to let the matter lie until the session of the new council. At that session he was instructed to proceed and did so. It is not suggested that the defendant was outside the jurisdiction or that there were any difficulties in the way of having him served at any time after the information was laid. The reasons advanced do not at all appeal to me as being sufficient to excuse the long delay of more than a year in issuing the summons, which to say the least is most unusual and a practice not to be commended. Notwithstanding these views, I feel obliged under the authorities to hold that the magistrate had jurisdiction to issue the summons when he did, and that upon the first ground the application to quash must fail.

The second objection is met and answered by sec. 5 of ch.71, 7-8 Edw. VII., which provides that the Act shall have and take effect from the passing thereof in every county and city in which Part 2 of the Canada Temperance Act is then in force, in the same manner and to the same extent as if it had formed a part of the said Act when Part 2 was brought in force in such county or city. Offences against the amendment committed before the passing thereof are not to be considered as violations of the Act. The amendment was assented to and became law on the 20th July, 1908. The offence complained of was committed on the 24th day of October in the same year.

As to the third objection: Sub-sec. 2 of sec. 138 of the Canada Temperance Act provides that it shall not be necessary in any summons, &c., to negative the circumstances, the existence of which would make the act complained of lawful, but upon any such circumstances being proved in evidence, the defendant shall be acquitted, so that whether or not the liquor in question was shipped for family or personal use was a question of fact for the magistrate and does not go to his jurisdiction. The defendant being unable to satisfy the magistrate that the liquor was so shipped we cannot review his decision upon the facts. see Rex v. Nickerson, ex parte Mitchell, 39 N. B. R. 316; Crim. Code secs. 1124 and 1125.