And the application to commit was dismissed with costs.

*Aylesworth*, Q.C., and *Shepley*, Q.C., for the motion.

*E. D. Armour*, Q.C., and *Leighton McCarthy*, contra, for the barrister.

*Wm. Macdonald* and *R. A. Grant*, for the returning officer.

## Province of Nova Scotia.

### SUPREME COURT.

Full Court.] [May 8.

THE QUEEN *v.* MCLEOD.

*Abusive language—One justice cannot try and convict for use of—Summary Convictions Act, R.S., 5th series, c. 103—Acts of 1889, c. 36.*

Defendant was convicted before a justice of the peace for the County of Pictou for using abusive language towards H. on a public thoroughfare, contrary to the provisions of R.S. (5th series), c. 162, s. 12.

*Held*, that the conviction was bad and must be quashed, there being no jurisdiction under the Summary Convictions Act, R.S. (5th series), c. 103, as amended by Acts of 1889, c. 36, in one magistrate to try and convict for such an offence.

The motion being unopposed no costs were allowed. Terms were imposed that no action should be brought by defendant.

*J. J. Power*, for appellant.

Full Court.] [May 8.

DUFFY *v.* ADAMS.

*Dismissal of action for want of prosecution—Exercise of discretion by trial judge not interfered with—Motion to postpone trial on account of absence of material witness—Special circumstances considered.*

Plaintiff brought an action for slander December 13th, 1894. The defence was delivered July 4th, 1895. On October 19th, 1895, there was an order dismissing the action for want of prosecution, unless it was brought on for trial at the next ensuing special term. The order was not insisted upon and the cause came on for trial at the regular sittings in May, 1896, when plaintiff moved for postponement on account of the absence of a material witness, whose evidence was relied upon to prove the words complained of. The witness had undertaken to be present, but had not obeyed his subpœna.

*Held*, that the ground upon which the postponement was asked would have been sufficient under ordinary circumstances, but that the circumstances of this case being of an exceptional character, and the trial judge having exercised his discretion in refusing the extension of time asked for, the Court would not interfere.

*F. B. Wade*, Q.C., for appellant.

*J. A. McLean*, Q.C., for respondent.