

year and some days afterwards) a summons was issued directed to the defendant, who resided in the city of St. John, commanding him to appear before the magistrate who took the complaint at the office of the said magistrate on Tuesday the 25th day of January then instant, at Albert in the parish of Hopewell in the said county of Albert to answer the said charge. On the return of the summons the defendant did not appear, and on notice by counsel for the prosecution a warrant was issued to compel the attendance of the accused. This warrant was backed by Robert J. Ritchie, police magistrate of the city of St. John, and the defendant was arrested thereunder on the seventh day of February, 1910. On his arrest the defendant made a deposit of \$95.55, taking a receipt therefor, and was allowed his liberty. At the hearing of the case no appearance was entered for the accused, and on proof of the offence charged he was fined the sum of fifty dollars and costs which amounted to forty-eight dollars and twenty cents. No evidence was given at the hearing which would in any way account for the delay which occurred between the laying of the complaint and the issue of the summons to the defendant. In my opinion and for the reasons set out at length in my judgment in *R. v. Peck, ex parte Beal*, the delay is fatal to the jurisdiction of the magistrate, and the order to quash should be made absolute.

BARKER, C.J. :—I concur in the judgment of the majority of the Court that the order nisi to quash should be discharged. With reference to what has been said as to issuing a warrant, I concur in the remarks of my brother White.

McLEOD, J. (dissenting) :—I agree with McKEOWN, J.

Conviction confirmed, and order nisi to quash discharged.