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No. 3.

HIGH COURT OF JUSTICE.

MIDDLETON, J., IN CHAMBERS.

SEPTEMBER 23RD, 1911.

RE BROOM.

*Criminal Law—Police Magistrate—Information for Perjury—
Refusal to Issue Summons—Criminal Code, sec. 655—
Amending Act 8 & 9 Edw. VII. ch. 9—Application for
Mandamus—Discretion of Magistrate.*

Application by James Broom for a mandamus to compel one of the Police Magistrates for the City of Toronto to issue a summons against one Turner, for perjury.

The applicant in person.

No one contra.

MIDDLETON, J.:—Broom laid an information against Turner for assault, a warrant was issued, and the case heard before the Police Magistrate. There was an issue of fact before the magistrate, and he believed Turner, and did not believe Broom and his wife, and accordingly dismissed the charge.

Broom now seeks to prosecute Turner for perjury; and, a summons (or warrant) having been refused by the magistrate, now moves for a mandamus.

Passing by all other difficulties in the applicant's way, it is, I think, clear that it is the duty of the magistrate, upon receiving an information, to hear and consider the allegations of the informant, and (if he thinks proper) of his witnesses (see the amendment to sec. 655 of the Criminal Code by 8 & 9 Edw. VII. ch. 9, schedule); and, if he is of opinion that there is no case made for the issue of a summons or warrant, to refuse it.

The magistrate's discretion in issuing or refusing to issue a summons is not subject to review in this Court. He can be compelled to do his duty; but in this case he has well discharged