

Mr. Justice McKeown, on the 31st of March, 1910, granted an order absolute for a certiorari to bring up the conviction, with an order nisi calling upon the convicting magistrate and the informant to shew cause why the conviction should not be quashed, upon the following grounds:

1st. The information having been laid on the 31st of December, 1908, and no summons issued until January 14th, 1910,—a period of one year and fourteen days,—the police magistrate had no jurisdiction to convict.

2nd. The Act under which the conviction was made, ch. 71, 7-8 Edw. VII. Can., is an amendment to the Canada Temperance Act, (which is a local option Act), and this amending Act, never having been voted on by the electors of Albert county, is not in force.

3rd. The exception mentioned in sub-sec. 2 of sec. 117 of the Canada Temperance Act (R. S. C. 1906, ch. 152), as amended by ch. 71, 7-8 Edw. VII., excludes the defendant from the operation of the Act.

As to the first ground: Every prosecution under the Canada Temperance Act has to be commenced within three months after the alleged offence (sec. 134). Laying the information is the initiation of the proceedings by the prosecutor, and the commencement of the prosecution. That has been held time and time again. It is contended here that the magistrate, having delayed for more than a year after the laying of the information before issuing his summons, is ousted of the jurisdiction which he admittedly had when he took the information. No authority has, however, been cited to us, and I can find none to support such a proposition. As I have been able to gather, the law seems to be that if the application for the summons be made within the time limited by statute for that purpose it is sufficient, although the issuing of the summons may be suspended for a time by the magistrate.

It is said by Mr. Tremear in his work on the Criminal Law, 2nd ed., p. 901, that, "subject to statutory exceptions, an indictment or information may be preferred at any time. The general rule is expressed in the maxim, *nullum tempus occurrit regi*, which means that the Crown is not barred by lapse of time from instituting criminal proceedings against an offender, and it follows that having commenced a prosecution within the time limited by statute, the Crown is not barred by lapse of time from continuing the prosecution to the end." Frequently in criminal Courts where there are