

declares that the prosecution "shall be heard and determined in a summary manner either upon the confession of the defendant or upon the evidence of a witness or witnesses." This, however, can in no way affect the justice's jurisdiction to proceed. At most it amounts to statutory declaration of the justice's duty to hear and determine the charge in a summary manner and convict only on confession or evidence. If a magistrate refuses or neglects to discharge his duty by proceeding when he ought, this Court would compel him to do so, but no such order would be made unless he had jurisdiction to proceed. If, on the other hand, his mere failure to proceed when he ought, deprive him of jurisdiction, no application to compel him to proceed based on that default could possibly succeed. If the magistrate's delay in proceeding is explained by circumstances which he bona fide believed to be a sufficient justification for it, as was the case in *Potts v. Cumbridge*, the delay would not, in my opinion, go to the jurisdiction. It would simply be the exercise of a discretion by the magistrate to go on or not, a discretion which this Court would review if necessary in an application where the point could properly arise. The explanation of the delay here is not very satisfactory. In fact there is strong evidence to shew that the prosecutor had in fact abandoned further proceeding. No special application was made to the justice to proceed until the issue of the summons, and as the jurisdiction continued, and the defendant does not seem to have been in any way prejudiced, I think the order nisi to quash should be discharged.

Order nisi to quash discharged.

BARRY, J.:—Charles N. Beal was on the 10th of March, 1910, at the parish of Hopewell in the county of Albert convicted before Edson E. Peck, Esquire, police magistrate in and for the county of Albert for that he the said Charles N. Beal at the city of Saint John between the second day of October, 1908, and the 31st day of December, 1908, unlawfully did send and ship and cause to be sent, shipped, and carried into the said county of Albert a quantity of intoxicating liquor, contrary to and in violation of the provisions of Part 2 of the Canada Temperance Act then in force in the said county of Albert, Robert A. Smith being the informant, and was adjudged for his said offence to pay a fine of \$50 with \$33.75 costs, and in default of payment distress and imprisonment.