

diction. It seems to be established that when a magistrate has commenced proceedings and seized himself with the jurisdiction in a case where other tribunals have concurrent authority, such other tribunals are not permitted to interfere with the exercise of his right so long as he is bona fide proceeding in the matter. In this case Magistrate Stuart with the consent of the prosecutor dropped the original proceedings started before him, and so advised in effect Magistrate Rhodes. It seems to me, therefore, that when the proceedings were started in Magistrate Rhodes' court, he had full jurisdiction to proceed.

It might be contended that the defendant had a right to obtain from Magistrate Stuart a final decision of the case and would insist upon the trial proceeding before him. It is not clear that the defendant would strictly have such a right if the prosecutor desired to withdraw the case. In a review in a higher court, however, the good faith of the prosecutor might be open to be questioned, and his further proceeding in the same matter before another justice might in the case of want of good faith be stopped. But that question does not arise here. If magistrates Stuart and Blight did not proceed to finally hear the case, it was because of their being prevented by the action of the defendant, who cannot now complain of their not proceeding.

I believe that J. H. Rhodes has jurisdiction, and that the order nisi for a writ of prohibition should be discharged.

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**NEW BRUNSWICK.**

FULL COURT.

APRIL 23RD, 1909.

REX v. KAY, EX PARTE PHILEAS A. LEBLANC.

*Sale of Bread—City By-law—Infringement—Ultra Vires—Constitutional Law.*

Conviction made by James Kay, police magistrate, Westmorland county, for violation of a by-law of the city of Moncton, coming before this Court on certiorari and order nisi to quash. Argued April 14th, 1909, before LANDRY, McLEOD and WHITE, JJ.

W. B. Chandler, K.C., supported the conviction.

Jas. C. Sherren, contra.