of the police magistrates for the city of Toronto to issue a summons against one Turner, for perjury.

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 s. 655 of the Criminal Code by 8 & 9 Edw. VII. c. 9, sch.); 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 this duty by declining to permit a witness, whom he has believed, to be prosecuted for perjury, at the instance of a witness whom he did not believe, and where, upon one perjury charge, there could be no further evidence than that given upon the trial of the assault. It is not in the public interest that the trial of a trivial assault case should be had in this indirect way.

Rex v. Meehan, No. 2, 5 Can. Crim. Cas. 312, *Ex p. Mac-Mahon*, 48 J.P. 70, and *Re Parke*, 30 O.R. 498, establish the law governing me.

Motion dismissed with costs.

Province of British Columbia.

COURT OF APPEAL.

Full Court.]   [Sept. 27.

HUSON *v.* HADDINGTON ISLAND QUARRY CO.

Practice—Appeal—Stay of proceedings pending appeal to Privy Council from Court of Appeal—Want of jurisdiction in Supreme Court to grant stay.

In an appeal to the Court of Appeal, judgment was given allowing the appeal with costs. Respondent having decided to