

latter to the former charge is not such a "proper amendment" as is contemplated by sec. 907. As to the allied defence of *res judicata* where the same facts constitute several offences, in regard to which I was referred to *The King v. Quinn*, 10 Can. Cr. Cas. 412, 11 O.L.R. 242, and the English decisions there cited, it seems to me that that doctrine to its full extent is now embodied in the Criminal Code, sec. 15, "where offence punishable under more than one Act or law." It seems to me that where there has been an acquittal the defendant may be again prosecuted on a charge setting up another legal aspect of the same facts: that the principle is that he must not be punished more than once for the same acts or omissions. See Russell on Crimes, 7th ed., pp. 4, 6, 1911. I think, therefore, that *R. v. Quinn* extends the rule too far."

Mr. Justice Beek, however, took the view that as the conviction for cheating had been quashed, it was as if no conviction had been made, and he referred to *R. v. Drury*, 18 L.J.M.C. 189, 3 Car. and K. 193.

A second habeas corpus motion was made to Mr. Justice Stuart. He held that the doctrine of *Reg. v. Drury* did not apply and that the accused, whose conviction for cheating had been quashed for lack of evidence to support it, was thereby actually acquitted of the charge of cheating and was entitled to the benefit of the plea of *autrefois acquit* when charged with an attempt to commit the same offence, *R. v. Weiss and Williams* (No. 2), 22 Can. Cr. Cas. 42 at 47. But the other charges were distinct and the commitments being valid as to them, the habeas corpus application was refused.

The offence of conspiring to commit an indictable offence is quite distinct from the offence itself. One person alone may cheat at a game. Two out of three persons playing a game may cheat the third without any previous arrangement, and may be jointly indicted, although the evidence might not disclose any prearranged plan.

"In the offence of conspiracy, the essential ingredient is the concocting of a common plan or design. Not a single step towards accomplishment is necessary. The evidence necessary to support the second indictments for conspiracy would clearly not be sufficient to support a verdict on the charge of cheating, or even of attempting to cheat." *R. v. Weiss* (No. 2), 22 Can. Cr. Cas. 42 at 49, 6 A.L.R. 264, 13 D.L.R. 632, 5 W.W.R. 48 and 460. In that case Mr. Justice Stuart said: "It is not merely a different legal aspect of the same facts. Certain evidence was given on which the first conviction was made. That evidence was taken as repeated on the present preliminary. It is true that it is to be the same evidence. But when you infer from the facts stated in that evidence that there was, in fact, a conspiracy to cheat, you go in quite a different direction from that in which