

clined to interfere or dismissed the accused, that would be no bar to his or another magistrate's taking up the matter *de novo* upon better or more convincing evidence. Such is unquestionably the rule in the ordinary matters of procedure before magistrates in the case of indictable offences; and to this practice are assimilated extradition proceedings by the provisions of . . . sec. 9 of R. S. C. ch. 142. This was recognized and affirmed as to the procedure in extradition by a strong Court in *Regina v. Morton*, 19 C. P. 9—the effect of which decision has not been interfered with by any provision of the Criminal Code. It does not affect the legal result if the magistrate assumes to commit illegally or without evidence, and has been set right by the Court upon habeas corpus by the discharge of the accused from custody. That gets rid of the illegal commitment, but not of the underlying charge, which may again be investigated for the purpose of extradition. . . .

[Reference to *Ex p. Seitz*, Q. R. 8 Q. B. 392.]

The accused may be arrested and imprisoned again for the same offence, provided it is not upon the same state of facts. If, as in this case, the discharge is for want of evidence, that may be supplied upon a subsequent re-arrest for the same extraditable offence. If the decision upon the habeas corpus is, that upon the merits . . . no offence has been committed—that all available evidence discloses no crime—that discharge is of course final to all intents and purposes. But, falling short of this, the discharge is final only so far as that particular proceeding is concerned. The matter may be re-agitated on another state of facts, with respect to the same alleged offence. The Court would fail in its duty and the whole purpose of the extradition comity would be frustrated if a man apparently guilty of the crime charged could escape by technicalities and subtleties that are discreditable enough in ordinary criminal law without being imported into extradition procedure.

I find that the United States Courts entertain like views upon this question, and it is well that both countries should agree in facilitating legal reciprocity in the transfer of fugitive offenders. . . .

[Reference to *Re White*, 45 Fed. R. 239; *Re Kelly*, 26 Fed. R. 852; *Ex p. M.*, 9 Peters (U.S.) 45.]

Touching the effect of the Habeas Corpus Act, 31 Car. II. ch. 2, sec. 6, in this case, reliance was placed upon a dictum in *Attorney-General v. Kwok-a-Sing*, L. R. 5 P. C.