

was done in regard to the information. Whether the old information was taken and the second summons issued on it and nothing further done I cannot tell. There is nothing to shew that the old information was not laid. In the absence of any evidence one way or the other must I not presume in favour of the regularity of the proceedings? Should I not hold that either the old information was resworn or that a new one was laid rather than that nothing was done or that what was done was illegal and improper? If the old information was resworn, it undoubtedly was resworn before the two magistrates, and the defect that was fatal in *R. v. Ettinger* would be gone. Neither would *R. v. McNutt* apply. It was a case where a warrant was issued upon an information not upon oath. The Court held that there must be an information on oath where a warrant was issued. Here only a summons was issued, and for a summons information on oath is not required, so that if there were a new information here even though not on oath, it is enough. I can see no reason why I must assume that the old information was not resworn or a new one laid. On the contrary, having regard to the presumption I have referred to, and to the fact that the learned counsel for the defendant raised no objection to the information if there were one, or to the want of one if there were not, I think I may quite safely assume, either that the old information was duly and properly resworn or a new information duly and properly laid.

The conviction will be confirmed with costs here and below.

Taking the view I do it is unnecessary to discuss the question whether defendant by appearing and taking part in the trial as he did waived his objections. Following *R. v. McNutt*, I should have to hold he did not. Nor need I discuss section 753 of the Code on which prosecution relied. That section provides that effect is not to be given on appeal to any objection to an information unless that objection has been taken at the trial. The only objection taken at the trial here was, as I have stated, that the matter had been previously disposed of in defendant's favour; autrefois acquit, the serious objection was not taken. So far as I can find section 753 has had no judicial interpretation, and I may be entirely wrong in the view I take of it, but I should have great hesitation in extending it so far as to deprive defendant from any advantage there might be in this other objection I have dealt with, even though he had not raised it at the trial.