

ity. It has, of course, been repeatedly laid down that after a hearing and acquittal upon the merits by a court of competent jurisdiction, the defendant cannot again be tried upon the same charge. This was emphatically affirmed in the case of *Wemyss v. Hopkins*, 32 L.T. Rep. 9, in the Court for Crown Cases Reserved, and in *Reg. v. Miles*, 62 L.T. Rep. 572, by the Queen's Bench Division. In case of a conviction or acquittal by a court of competent jurisdiction, the defendant, if again charged with the same offence, may plead autrefois convict or autrefois acquit, as the case may be. So far as the English decisions are concerned, the maxim has been enunciated by the judges only in cases where there has been a trial by a competent court. Thus in *Reg. v. London Justices*, 25 Q.B. Div. 357, it was held that there was no appeal to quarter sessions by the prosecutor when an information has been dismissed under the Highway Act, 1835, although sec. 105 of that Act gives a right of appeal to anyone who thinks himself aggrieved by "any order, conviction, judgment, or determination." The case before the Divisional Court would appear to be distinguishable from those above referred to, because the petty sessional court which dismissed the information was not duly constituted. In *Reg. v. Antrim Justices* (1895), 2 Ir. 603, and certain other Irish decisions which were quoted during the course of the argument, it was held that where a defendant was acquitted after a hearing on the merits by a court of summary jurisdiction, the acquittal could not be quashed by certiorari, although some of the justices were disqualified for bias or interest, because the decision was not void, but merely voidable, so that the defendant was in peril thereunder until it could be set aside. The Irish courts appear to have been by no means unanimous, as appears by the judgment of Mr. Justice Holmes in the *Antrim* case. Whether the Irish decisions are right or wrong, it is disappointing to find the Divisional Court, having regard to the public and, indeed, constitutional importance of the point, refusing to give it more than a cursory consideration. Mr. Justice Ridley thought that the rule ought to be discharged, on the ground that in no case