

Sessions of the Peace. And the same results follow on the conviction of the accused, as he may "be sentenced by the magistrate to the same punishment as he would have been liable to if he had been tried before the Court of General Sessions of the Peace." So that when tried by a magistrate "on a charge of being guilty of any such offence," it must mean that the magistrate may find the accused guilty of "any such offence" as is included in the charge.

Were it not so, this anomalous result would follow: By s. 797: "Whenever the magistrate finds the offence not proved, he shall dismiss the charge, and make out and deliver to the person charged a certificate under his hand stating the fact of such dismissal." And s. 798 provides that: "Every conviction under this part" (that is, Part 55, "The Summary Trial of Indictable Offences") "shall have the same effect as a conviction upon an indictment for the same offence." By s. 799 it is provided that: "Every person who obtains a certificate of dismissal or is convicted under the provisions of this part, shall be released from all further or other criminal proceedings for the same cause."

Upon the acquittal of the accused upon the charge preferred against him under s. 269, of having carnal knowledge of the prosecutrix, it was the duty of the Police Magistrate to deliver to the accused a certificate of dismissal. And, if, after the delivery of such certificate of dismissal to the accused, he was charged with having committed an indecent assault on the prosecutrix at the time he was accused of having carnal knowledge of her (and therefore necessarily included in that charge), and he elected to be tried by a jury, and an indictment was found against him for such indecent assault, say, at the Court of General Sessions of the Peace, the certificate of dismissal by the Police Magistrate on the first charge would be a complete bar under a plea of *autrefois acquit*. It would be an anomalous and an unheard of thing that such a certificate of dismissal should form a bar to such further criminal proceedings in another court, and be of no avail whatever in the court from which the certificate issued.

Or suppose a person is charged with the commission of an offence and there is not sufficient evidence to convict him of the offence charged, but there is evidence of an attempt to commit the offence. If the magistrate acquitted the accused, he could not again be put on trial for an attempt to commit the offence for that was included in the charge on which he was tried, and he should have been convicted of the attempt. (See s. 711 of the Code.) "An acquittal upon an indictment for murder may be pleaded in bar to another indictment for manslaughter: *Fost*, 392; 2 *Hale* 246; because he might have been convicted of the manslaughter on the first indictment. A person cannot after being acquitted on an indictment for felony be indicted for an attempt to commit it, for he might have been convicted for the attempt on the previous indictment for the felony. So also a person indicted and acquitted on an indictment for robbery cannot afterwards be indicted for an assault with intent to commit it!" *Archbold's Criminal Pleading* (20th ed.) 148.