these points the evidence is silent. But however it was done, a new summons was issued, and on its return day the magistrates met again—defendant again appears with his counsel and pleads not guilty. Before any evidence is taken the defendant raised the objection (I am quoting from the evidence of one of the justices) : " That as the matter had been previously dismissed we had no jurisdiction and asked for a certificate of dismissal." The certificate was refused and the case proceeded with.

Defendant's counsel took part in the trial by cross-examining the witnesses called for the prosecution. After hearing the evidence, the justices convicted defendant, and from their conviction he has taken this appeal.

Mr. Vernon asks me to quash the conviction because the matter was dismissed at the earlier hearing—in other words his defence is that of autrefois acquit. I should have thought and do think that the very well known decision in ex parte Flanagan, 3 Can. C. C. 82, settles this point. I cannot find that our own Court has ever been called upon to pronounce upon the soundness of that decision; but I do know that all well informed magistrates have been following it for more than ten years, and I imagine, if it were doubted or doubtful, our Court would have been called upon to disapprove of it long ago. Since it was decided, a defendant, before he can avail himself of such a defence, must shew that the two charges are identical—the mere fact that the dates between which the keeping for sale is alleged to have occurred are the same in both cases is not sufficient. There has been no attempt made here to shew that the charges are identical, and if this were the only difficulty in the way of the prosecution, I should not have much hesitation in confirming the conviction. But I suppose I must not, nor should not, shut my eyes to the outstanding difficulty that is here merely because defendant does not raise it.

That difficulty is in regard to the information, if any, for the second summons. Our Supreme Court has twice at least in similar proceedings to these, been called upon to deal with defective or improperly laid informations (R. v. Ettinger, 3 C. C. C. 287, R. v. McNutt, 3 Can. C. C. 184.) At first blush I felt the inference from these cases was so strong that I must quash the conviction here. But further consideration leads me to believe that the present case is clearly distinguishable from either R. v. Ettinger or R. v. McNutt, supra. As I have said, it does not appear from the evidence here what