

which the accused was given in charge on the former trial is the same in whole or in part as that on which it is proposed to give him in charge, and that he might on the former trial, if all proper amendments had been made which might then have been made, have been convicted of all the offences of which he may be convicted on the count or counts to which such plea is pleaded, the court shall give judgment that he be discharged from such count or counts.

"(2) If it appear that the accused might on the former trial have been convicted of any offence of which he might be convicted on the count or counts to which such plea is pleaded, but that he may be convicted on any such count or counts of some offence or offences of which he could not have been convicted on the former trial, the court shall direct that he shall not be convicted on any such count or counts of any offence of which he might have been convicted on the former trial, but that he shall plead over as to the other offence or offences charged."

Where a person has been acquitted on the merits by a Court of competent jurisdiction the acquittal is a bar to all further proceedings to punish him for the same matter, although a plea of *autrefois acquit* may not be allowed because of the different nature of the charges. *R. v. Quinn*, 10 Can. Cr. Cas. 412, 11 O.L.R. 242, but see *R. v. Weiss and Williams* (No. 1), 21 Can. Cr. Cas. 438 at 441, 13 D.L.R. 166, where it is said that the rule was extended too far in *Quinn's* case. * * *

The rule is also that, when a prisoner has been discharged upon the merits of the charge laid against him, by reason of the conviction or order of detention founded on the charge being set aside as unfounded in law, the prisoner thus discharged cannot lawfully be arrested and imprisoned again for the same offence upon the same state of facts, but that, when the prisoner is discharged merely by reason of a defect in the commitment or in consequence of the want or excess of jurisdiction in the committing court, or in the committing magistrate, he can be again arrested and tried for the same cause before a competent magistrate. *Ex parte Seitz* (1899), 3 Can. Cr. Cas. 127, 131, 8 Que. Q.B. 392; *Attorney-General for Hong Kong v. Kwok a Sing*, L.R. 5 P.C. 179, 42 L.J.P.C. 64, 12 Cox C.C. 565; *R. v. Young Lee* (No. 2), 28 Can. Cr. Cas. 236; *Tremear's Criminal Code*, sec. 906.

If on the previous occasion the information or complaint was dismissed merely upon a point of form and not adjudicated upon, the plea will not avail. *R. v. Ridgway* (1822), 5 B. & Ald. 527; *R. v. Harrington* (1864), 28 J.P. 485. So, too, where an information was laid by a person not entitled to lay it and was dismissed on that ground it was held no bar to an information subsequently laid by a qualified person. *Foster v. Hull* (1869), 20 L.T. 482; 19 Hals. 598.