

see *Fleming v. Newton*, 1 H.L.C. 376; *Gee v. Pritchard*, 2 Swanst. 418; *Martin v. Wright*, 6 Sim. 297; *Clark v. Freeman*, 11 Beav. 112; *Thorley's Cattle Food Co. v. Massam*, 6 Ch. D. 582; *Halsey v. Brotherhood*, 15 Ch. D. 514; *Colley v. Hart*, 6 R.P.C. 17; *Dunlop Pneumatic Tyre Co. v. Maison Talbot*, 52 W.R. 254; *Lee v. Gibbings*, 67 L.T.N.S. 263.

Province of Alberta.

SUPREME COURT.

Hyndman, J.]

[37 D.L.R. 126.

REX v. YOUNG KEE.

Criminal law—Quashing of first conviction—Former jeopardy—Summary trial—Cr. Code secs. 228, 773, 774.

An order discharging the accused on *habeas corpus* and quashing on *certiorari* his conviction made by a magistrate on a summary trial upon the ground that the defendant was not properly before the magistrate as he had been arrested without warrant for keeping a disorderly house and that consequently the magistrate was entirely without jurisdiction to try him, will not constitute a bar to a subsequent prosecution for the same offence to answer which the accused was regularly brought before the magistrate by warrant.

[*R. v. Weiss and Williams*, 22 Can. Cr. Cas. 42, 13 D.L.R. 632, and *Atty.-General v. Kwok-a-Sing* (1873), L.R. 5 P.C. 179, referred to; and see Annotation at end of this case.]

F. E. Eaton, for accused. *J. J. Trainor*, for Crown.

ANNOTATION ON ABOVE CASE FROM 37 D.L.R.

A defendant, pleading a former acquittal in answer to a summary proceeding for an offence, must show that the two charges are identical and where the offence is that of keeping liquor for sale between certain dates, the mere fact that the prior charge was for keeping liquor for sale between the same dates will not alone prove the identity of the offences. *The King v. Johnson*, 17 Can., Cr. Cas. 172.

The test is whether the same evidence would be required on both occasions. If fresh evidence is adduced and the charge is different there is no bar. *Bollard v. Spring* (1887) 51 J.P. 501.

Section 907 of the Criminal Code, 1906, is as follows:

"On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict* to any count or counts, if it appear that the matter on