

chief and not in reply. What was really intended was to commence de novo and try the prisoner again upon this further evidence—a jurisdiction which the magistrate does not possess.

The adjournment was not such an adjournment as is contemplated by sec. 722 of the Criminal Code.

If the magistrate is prepared to find guilt, but, in the circumstances, does not think it proper that punishment should be imposed, power is given to him to suspend sentence (in certain cases); but sentence cannot be suspended until there is an adjudication of guilt. There is no power to adjourn the trial merely because the evidence for the Crown is unsatisfactory and inconclusive; in that case the prisoner is entitled to an acquittal.

Prohibition granted.

MIDDLETON, J.

SEPTEMBER 10TH, 1915.

RE DURRELL.

*Will—Construction—Specific Bequest of Chattel—Direction by Codicil that Chattel be Buried with Testatrix—Invalidity—Pecuniary Legacies—Failure of Assets—Administration of Estate—Payment of Debts—Legacies Charged on Realty—Primary Resort to Residue of Personality—Costs.*

Motion by the executors, upon originating notice, for an order determining questions arising upon the will of Margaret Jane Durrell, deceased.

By her will the testatrix gave a certain diamond ring to her sister Maria Hendron, who was also the residuary legatee of her personal property. She then gave several pecuniary legacies, and directed the erection of a monument over her grave. She next gave the residue of her real and personal property to her executors, and directed them to sell the real property and to divide the proceeds, after payment of the legacies, equally among her sister and two brothers. Although there was a second residuary bequest of the personal estate, there was no direction to the executors concerning it. This will was made on the 24th March, 1914. On the 2nd April, by a codicil, the testatrix directed that her diamond ring be buried with her, and she gave certain other pecuniary legacies. The testatrix left some realty, heavily incumbered, and the surplus from this real