

you go if you infer that there was, in fact, a cheating In the first case you infer the existence of one set of facts not directly sworn to. Instead of a different legal aspect of the same facts, we have a different inference of fact from the same evidence. Therefore not only do I think the plea of *autrefois acquit* not available, but think the common law plea of *res judicata* not available either. On the first trial there was no question raised as to whether the men had previously formed a common design to cheat. The question was—had they in fact cheated."

Seemle, that *Reg. v. Drury*, 18 L.J.M.C. 189, goes no further than to declare that a conviction set aside for some *mere technical defect*, is to be considered the same as no judgment upon the question of former jeopardy. This would apply to some defect in the record, either in the indictment, place of trial, process, or the like, as the result of which the accused was not liable to suffer judgment for the offence charged on that proceeding, *R. v. Drury*, 18 L.J.M.C. 189, 3 C. and K. 193, 3 Cox. C.C. 546.

So the discharge of a jury without a verdict being given has been held insufficient to prevent a subsequent indictment. *R. v. Charlesworth*, 9 Cox. C.C. 44, 1 B. and S. 460, 31 L.J.M.C. 25.

Correspondence.

SOLDIERS' WILLS.

To the Editor, CANADA LAW JOURNAL:

DEAR SIR:—The article on page 400 in the November number of your journal reminded me that there is a serious defect in the will forms supplied to members of the C.E.F. They contain no appointment of an executor. Two have come before me, and I have had to require, in one case the mother and in the other the wife, to furnish bonds with sureties on taking out letters of administration, c.t.a. This may prove embarrassing in some cases.

While on the subject of soldiers' wills, I may mention an interesting case tried before me last Spring. A mariner, possessing some means, was lost at sea on the voyage from Barbados to Mahone Bay, N.S. During the three day's stay in Barbados he wrote a letter to his fiancée, and, probably inspired by the fantastic stories we used to read in 1914 and 1915 of messages from German prison camps concealed under postage stamps, he printed with his pen on the upper right hand corner of the envelope a brief will, leaving the bulk of his estate to his fiancée and the balance to his mother, and covered it with two big Barbados halfpenny stamps.

The will was contested but sustained.

Yours truly,

S. A. CHESLEY.

LUNenburg, N.S.