

1947

Present : Howard C.J.

GUNAWARDENE, Appellant and THE CHAIRMAN, D. R. C.,  
MATARA, Respondent.

761—*M. C. Matara, 56,509.*

Autrefois acquit—Issue raised by such plea should be tried first—Criminal  
Procedure Code, s. 331 (2).

The issue raised by a plea of previous acquittal should be tried and  
disposed of before the issues raised by the other pleas are tried.

**A** PPEAL against a conviction from the Magistrate's Court.

G. E. Chitty (with him A. H. E. Molamure), for the accused, appellant.

N. M. de Silva, for the complainant, respondent.

February 27, 1947. HOWARD C.J.—

In this case Mr. Chitty on behalf of the appellant raises the point that the Magistrate acted without jurisdiction. On October 10, 1944, the accused, who appeared in person before the Magistrate, stated "I am not guilty. I was discharged in case No. 54,185 of this Court after trial." Again, on December 15, 1944, Mr. Bastiansz for the accused raised the plea of *autrefois acquit*.

Now, section 331 (2) of the Criminal Procedure Code provides that a plea of previous acquittal may be pleaded together with any other plea, but the issue raised by such plea shall be tried and disposed of before the issues raised by the other pleas are tried. The Magistrate did not do this but dealt with this plea and the other issues in his judgment. In my opinion he therefore acted without jurisdiction.

The order of conviction must be set aside and the case remitted to the Magistrate to try this issue of *autrefois acquit* as a preliminary issue.

*Conviction set aside.*