



Double Jeopardy (Scotland) Act 2011

2011 asp 16

Plea in bar of trial

9 Plea in bar of trial: nullity of previous trial

- (1) This section applies where—
 - (a) a person avers, as a plea in bar of trial under section 7(2), that the charge arises out of the same, or largely the same, acts or omissions as have already given rise to the person, whether on indictment or complaint (the “original indictment or complaint”), being tried for, and convicted or acquitted of, an offence, and
 - (b) the prosecutor asserts, as a special reason why the case should proceed to trial, that the trial on the original indictment or complaint (the “original trial”) was a nullity.
- (2) Where the proceedings are before—
 - (a) the sheriff, or
 - (b) a justice of the peace court,the sheriff or justice of the peace court must remit the case to the High Court.
- (3) Where the proceedings are—
 - (a) before the High Court, or
 - (b) are remitted to that court under subsection (2),the court must determine whether to sustain or repel the plea.
- (4) The High Court may repel the plea only if satisfied that—
 - (a) the original trial was a nullity,
 - (b) the existence of that trial was not known to the prosecutor before the commencement of the proceedings in which the plea is made, and
 - (c) it is in the interests of justice to do so.