

## Magee Dismissal Plea

The attorney for Russell Magee asked here yesterday that the sole remaining charge against the San Quentin convict be dismissed because he has already been tried and acquitted.

In a motion filed in Superior Court, attorney Robert Carrow said it would amount to double jeopardy to try Magee again on a charge of aggravated kidnaping.

The estimated \$1 million

trial of the 33-year-old inmate, accused in connection with the gunfight at the Marin county civic center in August 1970, ended in a hung jury April 13.

Attorney General Evelle J. Younger announced last week that Magee will be retried solely for aggravated kidnap, because the jury deadlocked 11 to 1 for acquittal of the charge that he murdered Judge Harold J. Haley.

In his dismissal motion yesterday, Carrow included an affidavit by Bernard Soares, foreman of the Magee jury, that there was unanimous agreement among jurors that Magee was not guilty of aggravated kidnap. The jury deadlocked 11 to 1 in favor of conviction on simple kidnap, the affidavit said.

Judge John A. Ertola set a hearing on the motion for 9 a.m. Thursday.