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[G.R. No. 2784. March 14, 1907]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CARLOS GEMORA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

A complaint was filed in the Court of First Instance of Iloilo charging the appellant, Carlos Gemora, jointly with several others, with giving false testimony in a civil case. On this complaint he was arraigned and pleaded not guilty, but before entering upon the trial, and before any witnesses were called, this complaint was dismissed and a new complaint was filed charging him with the same offense, but separately from his codefendants in the first complaint. On the trial on the second complaint he filed a plea of "former jeopardy," and assigns as error on this appeal the trial court's refusal to dismiss the complaint against him on this ground.

In the case of the United States vs. Ballentine^[1] (4 Off. Gaz., 722) we said that one is not in "jeopardy," in the sense in which that word is used in the Philippine bill,^[2] until he has been brought to trial (1) upon a good indictment, (2) before a competent court, (3) after the defendant has been arraigned, (4) after the defendant has pleaded to the indictment, and (5) after the investigation of the charges has actually been commenced by the calling of a witness.

The first complaint was dismissed before any witnesses had been called in accordance with the foregoing rule, and the accused never was in jeopardy thereunder.

It is further contended, that the trial court erred in proceeding with the trial in this case before final judgment had been rendered in the civil case wherein the accused was charged with giving false testimony.

We have held, heretofore, that the trial of one charged with giving false testimony in a

criminal case must be suspended, pending the final decision of the principal case, but in such cases, unlike the case at bar, the penalty to be imposed is dependent on the outcome of the principal case, as will appear from an examination of articles 318, 319, and 320 of the Penal Code. In such cases no judgment can be rendered in the case charging false testimony until it appears from the judgment in the principal case, first, whether any punishment is inflicted in the principal case, and the nature of the penalty imposed where there is a judgment of conviction; and second, whether the false testimony did or did not “favor or prejudice the accused.”

We find nothing, however, in article 321 of the Penal Code, which defines and penalizes the offense of giving false testimony in a civil case, which makes the proceedings or the penalty imposed in such cases in any wise dependent on the outcome of the civil case in the course of which the false testimony was given, and we know of no reason why the criminal trial should be suspended pending the trial of the civil case.

The evidence of record fully sustains the findings of the trial court, and we find no error in the proceedings prejudicial to the rights of the accused. The judgment appealed from is therefore affirmed, with the costs of this instance against the appellant. After the expiration of ten days, let judgment be rendered in accordance with this decision, and ten days thereafter let the case be remanded to the lower court for proper action. So ordered.

Arellano, C. J., Torres, Johnson, Willard, and Tracey, JJ., concur.

^[1] 4 Phil. Rep., 672.

^[2] I Pub. Laws, 1057.