

8 Phil. 78

[ G.R. No. 3178. March 18, 1907 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARIANO ALONSO,  
DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**WILLARD, J.:**

The proof of the Government was so complete as to leave no doubt at all of the guilt of the appellant.

In the preliminary examination before a justice of the peace, the appellant pleaded guilty; on the next day he withdrew this plea. When arraigned in the Court of First Instance he pleaded not guilty. The plea of guilty made before the justice of the peace was entirely voluntary and no claim to the contrary is made in this court. At the trial in the Court of First Instance evidence was received, over the objection of the appellant, of his plea of guilty before the justice of the peace, and the reception of this evidence is assigned as error here.

This assignment can not be sustained. Evidence as to the plea of guilty in the court of the justice of the peace was competent, as would be evidence of any other voluntary admission made by the defendant. The fact that this admission was not made out of court, but was made in court, does not render it any the less admissible against him. It, of course, is not conclusive and upon it no judgment of conviction could be rendered. The defendant can explain the circumstances under which it was made and after such explanation the courts can give to it such weight as it merits.

The judgment of the court below is affirmed, with the costs of this instance against the appellant.

After the expiration of ten days let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

*Arellano, C. J., Torres, and Mapa, JJ., concur.*

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*CONCURRING IN THE RESULT*

**TRACEY, J.:**

I regret to feel obliged to dissent from the doctrine of the principal opinion in this case. The rule as to the use in evidence of a withdrawn plea of guilty is well stated in the syllabus of *The People vs. Ryan* (82 Cal., 617), as follows:

“After a plea of guilty has been withdrawn by permission of the court and the plea of not guilty substituted as provided by section 1018 of the Penal Code, the plea of guilty becomes *functus officio*, and can not be proved upon the trial as an admission or confession of the defendant.”

Section 25 of General Orders, No. 58, provides:

“The court may at any time before judgment upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted.”

The privilege of substituting a new plea would avail little and would be robbed of its effect if the original plea conceding the whole case were to be received against the accused in the same proceeding. Once admitted, it is difficult to say that its effect could be limited, as suggested in the principal opinion.

On examination of the record, however, there appears, apart from this plea of guilty, sufficient evidence against the accused to sustain the conviction, and for this reason I concur in the result.

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Date created: July 24, 2014