

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. AGUSTIN CLAVERIA, DEFENDANT AND APPELLEE.

G.R. No. 9282. February 13, 1915

Ponente: CARSON, J.

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CARSON, J.:

The information filed in this case was dismissed in the court below on the ground of a former judgment of conviction of the offense charged therein. The record is before us upon the Attorney-Generals appeal from the judgment dismissing the information. The following extract from the brief of the Attorney-General sets forth the ground upon which he bases his right of appeal, and the substance of his argument in support of his contentions that the judgment entered in the lower court should be reversed and the record remanded for further proceedings:

"A demurrer was interposed to the complaint by counsel for the defendant on the ground that the latter had already been tried and convicted in another case for the same crime with which he is charged herein, and consequently that he has been once in jeopardy.

"In reply to the demurrer interposed by counsel for the defendant, the Attorney-General prayed the court to overrule the said demurrer on the ground that the allegation of once in jeopardy does not constitute one of the reasons for demurrer according to General Orders No. 58.

"In view of the demurrer interposed by counsel for the defendant and the arguments presented by him in support, thereof, the court sustained said demurrer on the ground alleged by the defense and dismissed the information.

"From the order of the court sustaining the demurrer and dismissing the information the provincial fiscal filed an appeal, by virtue whereof this case has been brought up before this court for review.

"It is an elementary fact in criminal procedure that a demurrer hypothetically admits the facts alleged in the complaint, and on these facts, and only on them, bases the question of law as to whether or not the defendant can be compelled by the court to answer the complaint. (U. S. vs. Perez, 1 Phil. Rep., 203.) For this reason section 21 of General Orders No. 58 does not include as one of the grounds or reasons for demurrer the fact that the defendant has been once in jeopardy—that is, that he has been tried or has been in danger of being convicted for the same crime— but section 24 thereof [includes it] as a defense that must be set up in the answer, since it requires evidence tending to show that the crime for which the defendant had previously been tried, convicted, or acquitted was identical with the crime for which it is proposed to try him again, evidence that can not be adduced in the hearing on the demurrer, which only raises a purely legal question.

"In the case of the United States vs. Garcia Gavieres (10 Phil. Rep., 694), the Supreme Court has declared that 'in pleading a former jeopardy it is not sufficient that the defendant simply allege that he has been once in jeopardy; he must both allege and prove specifically that the offense, of which he was formerly convicted, or acquitted, is the same offense for which it is proposed to try him again.' "

An examination of the record, however, clearly discloses, as we think, that no demurrer was filed in the court below, and that the judgment entered by the trial court was based upon an oral plea of a former conviction of the

offense charged in the information in the present case, supported by competent evidence.

It sufficiently appears from the relation of facts set forth in the opinion of the trial judge that, after arraignment, an oral plea of "autrefois convict" was submitted in open court, and that the judgment dismissing the complaint was based upon that plea, supported by the record of the former trial which was had in the same court two days prior to the trial of the present case. Counsel were permitted to file written arguments in support of their respective contentions, and in these arguments the plea is referred to and discussed as an "excepcion dilatoria" (demurrer); but the mistaken designation or description of the proceedings had in the court below by counsel in their briefs is by no means conclusive as to the real nature of those proceedings, and, as we have said, the account of the incident set forth in the opinion of the trial judge leaves no room for doubt that his judgment was entered, not upon a demurrer to the information, but upon an oral plea of "autrefois convict" submitted in open court on behalf of the accused after his arraignment and after the case had been called for trial.

Sections 24 and 25 of General Orders No. 58 are as follows:

"SEC. 24. Should the demurrer be disallowed, the court must require the defendant to plead. If he refuses, a plea of not guilty shall be entered for him.

"There are four kinds of pleas to an information or complaint: (1) Guilty; (2) not guilty; (3) a former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty; (4) once in jeopardy, which may be pleaded with or without the plea of not guilty.

"The plea must be oral, and a minute thereof in writing filed with the papers in the case.

"SEC. 25. A plea of guilty can be put in only by the defendant himself in open court. 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."

It will be seen that in the case at bar the accused was wholly within his rights in entering an oral plea of a former judgment of conviction of the offense charged, without at the same time pleading either guilty or not guilty; and we are of opinion that upon the entry of that plea the court properly proceeded to try the issues raised thereby, without entering upon the trial of the accused, upon the merits, for the offense with which he was charged in the case then pending.

In general the best evidence in support of such a plea where the identity of the accused is not challenged, consists of the record of the former case, showing the judgment of conviction entered therein and the nature of the offense of which the accused was convicted; though, of course, cases may and do arise wherein it is found necessary to offer other and additional evidence in support of the plea. As a rule, however, where the identity of the accused is not challenged, the issues raised by a plea of "autrefois convict" are sufficiently developed for its proper disposition by the production of the record in the former case.

It is, of course incumbent upon the accused to produce that record or a duly certified copy thereof, or secondary evidence as to its contents in the event that the original has been lost or destroyed; and the Attorney-General insists that the judgment entered in the court below is fatally defective because, as he contends, the record does not disclose that any competent evidence was submitted in the court below in support of the plea of the accused. The Attorney-General, treating the plea actually entered as in truth and effect no more than a demurrer to the information, assumes that the record in the former case was not submitted at the trial and contends that the trial judge was without authority to look to it for the facts upon which he based his judgment. The contention would seem to be that the trial judge improperly took judicial notice of the contents of the record of the former case, and assumed the right so to do on the ground that the former trial had been had before him and that the record was filed in the clerk's office of the court in which the case before him was pending.

The record is highly unsatisfactory in its relation of the incidents as they actually occurred in the course of the proceedings had in the court below, and as a result there is some apparent ground for the contentions of the Attorney-General. But we think it sufficiently appears, from the opinion of the trial judge and the briefs filed in the court below, that at the time when the plea was submitted, the record of the former case had been physically withdrawn from the files of the clerk's office, and submitted in the pending case, or if not that it was treated as though it were actually before the court, and that the trial judge and counsel for both parties dealt with it as an exhibit submitted without objection in support, of the plea.

We agree with the Attorney-General, that in general, courts are not authorized to take judicial notice in the adjudication of cases pending before them of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and not with standing the fact that both cases may have been tried or are actually pending before the same judge. But in the absence of objection, and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge of the opposing party, reference is made to it for that purpose, by name and number or in some other manner by which it is sufficiently designated; or when the original record of the former case or any part of it, is actually withdrawn from the archives by the court's direction, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending.

In the case at bar we think the record sufficiently discloses that the record of the former case was before the court at the time when the plea was submitted, either by reference or by its actual production in open court; and it is very clear that without objection, and indeed with the tacit if not express consent of counsel, the trial judge so regarded it. No question was raised as to the identity of the accused, and the record of the former case was not only the best evidence but all the evidence which, from the nature of the case, could properly have been submitted or considered by the trial judge in ruling on the plea. We conclude that there was no such error in procedure as is relied upon by the Attorney-General as a ground for this appeal.

In the record of the proceedings in the court below the plea entered by the defendant is sometimes referred to as a plea of "double jeopardy on the ground of a former conviction of the same offense." It may be well to observe that while the words "double jeopardy" have sometimes been used in a broad sense in pleas wherein the accused relies on a plea of former acquittal or conviction as a bar to a new trial, sections 24 and 25 of General Orders No. 58 clearly indicate the intention of the legislator that the appropriate distinction should be made in the form of the plea, in accordance with the precise nature of the fact to be proved thereunder. Where, however, the use of the broader term leads to no confusion, and especially where it is coupled, as in this case, with explanatory words showing that the accused relies expressly on a former conviction or acquittal, there is manifestly no fatal error in accepting proof of a former conviction or acquittal as sufficient to maintain a plea of double jeopardy, which was understood by the parties to be a plea in bar on the ground of the former conviction or acquittal.

We expressly reserve our opinion not only as to the merits of the case decided in the court below, but also as to the right of the Attorney-General to bring the judgment entered there to this court for review upon the merits, neither of these questions having been raised or submitted by him in his brief.

The grounds upon which the Attorney-General rests his right to appeal in this case not being well founded in the record, the appeal should be dismissed, with the costs of this instance de officio. So ordered.

Arellano, C. J., Torres, Trent, and Araullo, JJ., concur.

Johnson, J., dissents.

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