

The judgment of the trial court is therefore reversed, and, as the facts are fully developed, a judgment is directed to be entered here in favor of appellant against appellee for \$2,500, and interest thereon from September, 1928, at the rate of six per cent. per annum.

BINGANAN *v.* STATE.

Opinion delivered February 24, 1930.

1. INDICTMENT AND INFORMATION—DISMISSAL OF CHARGE.—A finding of an indictment for forgery will not be considered a dismissal by the grand jury of a charge for obtaining money by false pretenses, within the meaning of Crawford & Moses' Dig., §§ 2997, 2998, so as to preclude a subsequent indictment for the latter offense.
2. INDICTMENT AND INFORMATION—EFFECT OF SECOND INDICTMENT.—Where defendant was indicted for forgery of a check, and pending appeal the grand jury, without further direction from the court, indicted the defendant for obtaining money under false pretenses by issuance of the same check, the court did not err in failing to quash the second indictment on the ground that the grand jury had acted without authority since the matter had not been resubmitted to the grand jury by the court after the first indictment was returned.
3. CRIMINAL LAW—DOUBLE JEOPARDY.—Where a conviction of defendant for forgery and uttering a check as a forged instrument was based on the act of issuing a check on a bank in which defendant had never had an account and cashing it, a trial for the different offense of obtaining money under false pretenses by issuance of such check did not put defendant in jeopardy a second time.
4. CRIMINAL LAW—TEST OF DOUBLE JEOPARDY.—The test of double jeopardy is not whether defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense.
5. CRIMINAL LAW—PROOF OF OTHER OFFENSE.—In a prosecution for obtaining money on a check under false pretenses where defendant had no money in the bank, evidence showing the drawing and issuance of another check on the same bank was not error, where the jury were told that they could not convict defendant on such testimony.

Appeal from Sebastian Circuit Court, Fort Smith District; *J. Sam Wood*, Judge; affirmed.

John E. Tatum, for appellant.

Hal L. Norwood, Attorney General, and *Pat Mehaffy*, Assistant, for appellee.

KIRBY, J. This appeal is prosecuted from a judgment of conviction for obtaining money on a check under false pretenses. The appellant was first indicted for forging and uttering a forged instrument in giving the check, and upon appeal to this court, upon a confession of error by the Attorney General, the cause was reversed. *Binganán v. State*, 180 Ark. 266. Pending the appeal, the grand jury, without any further directions from the court, indicted appellant for obtaining money under false pretenses by the issuance of the check. He moved to dismiss the indictment as having been returned without authority and pleaded former acquittal.

Appellant contends that the court erred in not quashing the indictment herein, insisting that it was found without authority by the grand jury, since the matter had not been resubmitted to the grand jury by direction of the court after the first indictment was returned. The finding of the indictment for forgery, etc., however, the first indictment, cannot be considered a dismissal of the cause by the grand jury within the meaning of the statute, § 2997-98, C. & M. Digest, (2212-2214, Kirby's Digest), and, if such were the case, the court held in *Marshall v. State*, 84 Ark. 90, in construing the statute, that it has no reference to the independent action of the grand jury over such causes, saying: "It contains no limitation upon the duty of that body, after it had been impaneled and sworn, to make its inquiries and presentments as broad as the oath it takes. * * * It is the function of the grand jury, therefore, to investigate and re-investigate concerning matters within their jurisdiction as often as they 'have knowledge or may receive information,' and the statute under consideration is not intended to limit or restrain that function."