

LEONARD *v.* STATE.

Opinion delivered February 3, 1913.

CRIMINAL LAW—FORMER CONVICTION.—Where defendant is indicted and convicted for the crime of illegal cohabitation, the plea of *autrefois convict* will not be sustained to a second indictment when the second indictment and proof show the acts of illegal cohabitation to have occurred subsequent to the date of the former indictment.

Appeal from Independence Circuit Court; *Eugene Lankford*, Judge, on exchange; affirmed.

*Ira J. Mack*, for appellant.

*William L. Moose*, Attorney General, and *Jno. P. Streepey*, Assistant, for appellee.

Wood, J. The appellant was charged, on information of the prosecuting attorney, with the crime of illegal cohabitation committed with Pearl Gilbert on the 28th day of June, 1912. He was convicted and fined in the sum of one hundred dollars, and appeals.

In addition to his plea of not guilty, he set up former conviction under the indictment returned against him on the 4th day of November, 1911. The testimony in the case was substantially the same as that in case No. 1729. The proof tended to show that Pearl Gilbert lived with the appellant in the same relation as shown by the testimony in No. 1729 until she left for Louisiana in March, 1912. The testimony also tended to show that when she came back from Louisiana, she lived in the house with the appellant. She testified that she went to his daughter's, but the testimony also showed that Leonard's daughter was then at his house.

Practically the same questions are presented in this case as were presented in the other case on the issue of appellant's guilt. There was no prejudicial error in refusing to sustain appellant's plea of *autrefois convict* for the reason that the court, in its instructions, confined the inquiry to the alleged acts of illegal cohabitation occurring subsequent to the 4th day of November, 1911, when the indictment on which he was convicted was returned against him. There was evidence to sustain the verdict.

The judgment is correct.

Affirmed.

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