to be brought in by the plea of former conviction. It might be urged that the Rachel Woodward named in both indictments was not shown to be the same person. That she was the same person was presumed to be the case, unless it was otherwise shown, because all the circumstances set forth in the record showed her to be the only one of that name. In support of this proposition of law Mr. Richards read from a number of authorities.

Judge Judd—It seems to me that the question that the plea of former conviction must be considered. The defendant did not plead it. Now how can it be brought in?

Mr. Richards—It was not necessary. In this case the court had no authority to pass that second judgment.

Judge Zane—Then the court must inquire into the record in the other case?

Mr. Richards—Yes, because the other record was before the court when it passed judgment upon the defendant. Would the court be justified in passing judgment upon two indictments identical in all respects, simply because there were two papers?

Judge Judd — The defendant should plead it.

Mr. Richards—In the Snow case it was not shown that the three cohabitations were the same, in each record. All the records combined showed it. The Supreme Court said it would consider all the records to determine this one question, "Is the defendant being imprisoned twice for the same offense?" In that respect this case is identical The Supreme Court was more liberal than to say it would only consider one record, though the attorney for the government urged that it should not do any more. It decided that all the records should be considered where there was a claim that the court had no jurisdiction to pass sentence a second time.

In this case there would probably be no question if there had been no plea of former conviction. But it was not necessary, from the fact that the record was before the court, and its attention specially called to it. The question is whether the court had power to render the judgment it did. In the Lang case, the United States Supreme Court said it did not. It matters not what the jurisdiction was, such a judgment was not voidable, but void.

It was insisted here, for reasons identically the same as in this case, that the court had no jurisdiction. The same assertion was made in the Supreme Court, but it was said by that tribunal to be wrong. If wrong there it is also wrong here.

Judge Judd—Why did counsel suffer this defendant to plead guilty? The court could do nothing but pass judgment. The indictments were not before the court.

Mr. Richards—The indictments were before the court.

Judge Judd—Then why did not counsel plead it?

Mr. Richards — I was not the counsel, so I cannot say. Perhaps he thought there were two offenses. We know there were not. But because counsel was mistaken, is this man to suffer? You cannot find any authorization for a court to take jurisdiction to pass judgment in such a case as this. Can a court illegally imprison a man for years, and yet there be no way to give him justice? I say, no. The constitutional right of this man is being invaded. The supreme tribunal of this land has said a man cannot be punished twice for the same offense. That is why it heard the Snow case. The record in a single case there did not show that he was being imprisoned three times for the same offense. But the court concluded it should go into all the records to ascertain the fact of the imprisonment, and it did, though the government made the same claim there that it does here. The Supreme Court said that *habeas corpus* was available when it appeared on the judgment that the court had passed it when it had no power to do so. In this case it not only appeared on the judgment, but in the whole record in this matter, precisely the same as in the Snow case. When there is an effort to convict a man twice, the court exhausts its jurisdiction with one conviction.

Judge Judd—In the Krepps case the judgment was attacked when it was sought to enforce it.

Mr. Richards—What is the difference between seeking to enforce a judgment against a person or against his property?

Judge Judd—You know the facts in the Krepps case?

Mr. Richards—Yes, sir; and the case is identical with this. The judgment was illegal, and was resisted. Here the judgment is illegal and we are resisting it. So it was in the Snow case. The district attorney said the court had no jurisdiction to hear it, precisely as he says here. The Supreme Court said the district attorney was wrong. Being in the same position, is he not wrong now? He cannot be otherwise. The Supreme Court decided the Snow case on principle—the same principle as that involved here. The records there were just as they are here, but the Supreme Court was more liberal than the position urged here. It never referred to the plea of former conviction, but only determined the fact of the illegal imprisonment. It appears in this indictment that it was a second conviction, making it still more plain. The Supreme Court expressly states that this question is a matter that can be considered on *habeas corpus*, and makes no reference to a plea, but only to what appears on the record, as in this case. The commitment was violative of a constitutional right, and *habeas corpus* was therefore a means of relief. Here the court had the record. We now show it from the record. We bring no other evidence to prove it. The record does that, and no authority in law can be found to enforce this illegal judgment.

This is a proceeding in aid of the liberty of the individual. The privilege of *habeas corpus* is one of the most sacred rights of the citizen. We have no other remedy in this case. The prisoner is being held wrongfully; there is no question of that. The court had the record before it and it was bound to know the law. It should therefore never have passed judgment.

MR. HILES

contended that this and the Barton case were identical, except that the equities in favor of Barton were more persuasive than in this case. I presume that this court knows some law. Counsel has repeated with tiresome monotony that the record shows that the court had no jurisdiction. I say that the record shows it had jurisdiction. He presents one record to impeach another. He says there would be no question if the defendant had pleaded a former conviction. I say there would still be a question, and that is the proof of the plea. Even if he had pleaded former conviction, and it was not on the record, it would not avail him by ousting the court of jurisdiction. The court cannot consider the record in the unlawful cohabitation case, but even if it could, it does not contradict the record in the adultery case. I would offer to prove to a jury that he pleaded guilty to the adultery charge first.

Judge Judd — There are three cases, and nothing to show that they are related to each other.

Mr. Hiles—That is just what we claim, and submit the record.

MR. RICHARDS

said the distinctions from the Barton case were that judgment was suspended in that case; and, still more important, the indictment shows that the adultery was covered by the unlawful cohabitation; that record was before the court in the Maughn case, but not in the Barton case. The United States Supreme Court says that on *habeas corpus* the two, or three records, can be considered. This court should therefore consider the two. The court does not lose jurisdiction simply because somebody points out the fact. The loss of jurisdiction rests on the law.

No plea of former conviction was entered in this case, but in the face of two former convictions the court passed judgment when it had no right to, having at the same time the record before it. It is a fact that the unlawful cohabitation pleas were prior to the arraignment for adultery, as the record shows.

The case was taken under advisement, and court adjourned until 4 p m.

CURRENT TOPICS IN EUROPE.

The "Archives of Venice" have just been published in fifty magnificent volumes. No city in the world was ever so rich in public documents as Venice, and they are almost coeval with its reputed birth on the seventy-two small islands that formed the original city. The student of history frequently after a brief glance at ancient history turns to the record of his own country and the great events of modern