THE ELEMENT OF JURISDICTION IN CRIMES— ITS INTERNATIONAL AND MUNICIPAL ASPECT

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CHAPTER I
INTRODUCTION

General Concept of Jurisdiction: Jurisdiction is the power conferred by law upon a judge or court to try a case, the cognizance of which belongs to them exclusively. (U. S. v. Pagdayunan, 5 Phil. 265). It is the power one has to govern or to execute the laws and specially the power with which judges are invested for administering justice, for trying civil or criminal cases, or both, and deciding them and rendering judgment according to the laws. (Escriche, 3 Diccionario de Legislacion y Jurisprudencia, 743, ed. 1875, cited in the case of Conchada v. Director of Prisons, 31 Phil. 94).

Senses in which the term jurisdiction is used: The word 'jurisdiction' as applied to the faculty of exercising judicial power, is used in several, although related senses, since it may have reference (1) to the authority of the court to entertain a particular kind of action or to administer a particular kind of relief, or it may refer to the power of the court over the parties, or (2) over the property which is the subject of the litigation. (Banco-Español-Filipino v. Palanca, 37 Phil. 921).

In International Law: Used in the sense in which it is understood in international law, the term 'jurisdiction' means the absolute authority of a state over its territory and persons therein. In this sense, it is analogous to the term 'sovereignty'; sovereignty expressing the ideal conception of a state's authority and power over its territory; and jurisdiction manifesting this ideal conception in its actuality. Quoting Chief Justice Marshall (Schooner Exchange v. MacFadden, cited in II Moore's International Law Digest, page 4): "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sov-

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ereignty to the same extent on that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source. This consent may be either express or implied." The exclusiveness of a nation's jurisdiction within its own territories is sustained by Hyde when he said: "The right to pass upon the lawfulness of an act must necessarily be the exclusive possession of a single sovereign. Otherwise, as has oftentimes been observed, differing legal consequences might be annexed to the same act, rendering it both lawful and unlawful. The right must also, therefore, in every case belong to that sovereign or political power which exercises control over the place where the particular act was committed. Thus it is that a state may determine the lawfulness of acts committed throughout the national domain, whether land or water, or upon its vessels, whenever by reason of their character or position, they are regarded as subject of its control. Conversely, a state cannot determine the lawfulness of occurrences in places outside of, or not assigned constructively, to its control." (1922 International Law, page 218).

In Criminal Law: Used in the sense in which it is understood in criminal law, it means the 'power and authority constitutionally conferred upon a court, a judge, or a magistrate to take cognizance of an offense and to pronounce the judgment or sentence provided by law, after a trial in the manner sanctioned by law as proper and sufficient. The word 'jurisdiction' with reference to criminal proceedings is a term of comprehensive import, embracing every kind of judicial action on the subject-matter, from the filing of the indictment to the pronouncing of sentence. It means to have power to inquire into the fact, to apply the law, and to declare the punishment in a regular course of judicial proceeding; it is the right of administering justice through the laws, by the means which the law has provided for the purpose. (16 C. J. 147).

Extent of criminal jurisdiction: With respect to the extent of the criminal jurisdiction of a state, Calhoun says, "We hold that the criminal jurisdiction of a nation is limited to its own dominions and to vessels under its flag on the high seas, and that it cannot extend to acts committed within the dominion of another state without violating its sovereignty and independence." (II Moore's Int. Law Digest, Sec. 200).

As to what law governs: Lord Brougham says: "The lex loci must needs govern all criminal jurisdiction, from the nature of the thing and the purpose of jurisdiction." (Warrender v. Warrender, cited in the case of Commonwealth v. Kunzman, 41 Pa. 429).

Criminal Jurisdiction classified: Moore classifies criminal jurisdiction as follows:

I. Territorial:
   1. Actual—
      (a) Subjective—As to offenses committed by persons in the territory except diplomatic officers.
      (b) Objective—As to offenses committed within the territory by persons outside, i. e. a shot fired on one side of the boundary and taking effect on the other side; infernal machine, swindling letters, poisoned food, counterfeit money sent into the country by a person outside.
   2. Constructive:—Over offenses committed on vessels of the country.

II. Non-territorial:
   1. Personal, over citizens
      (a) Generally.
      (b) In particular places, e. g. barbarous lands.
      (c) As to particular acts.
   2. As to particular offenses, whether by citizens or foreigners.
      (a) Piracy.
      (b) Where two countries by conventions agree to punish citizens of each other, e. g. conventions for the suppression of slave trade.
      (c) Against safety of the state; counterfeiting or forging the national seals, papers, money, bank bills, authorized by law.
   3. Offenses committed abroad by foreigners against citizens.
   4. All offenses, whenever and by whomever committed.

(II Moore's Int. Law Digest page 243)

CHAPTER II
PROCEDURE

How lack of jurisdiction of the court is pleaded: The defendant in a criminal case may raise the question of lack of

jurisdiction of the court by demurring to the complaint or information when it appears on the face thereof that the offense charged is not within the jurisdiction of the court. (Sec. 21, par. 1, Code of Crim. Proc.) In Courts of First Instance or of like jurisdiction, the demurrer must be in writing, signed by the defendant or his counsel, and must distinctly set forth the ground of the objection, or it shall be disregarded. The formal demurrer shall be accompanied by such arguments in writing as the defence may desire to submit to sustain it. (Sec. 22, Code of Crim. Proc.)

However, may the court, under a general demurrer, where objection to the jurisdiction of the court is not made a ground, nevertheless take notice of such lack of jurisdiction and dismiss the case on that ground?

In the case of Commonwealth v. Kunzman (41 Pa. 429), the defendant filed a general demurrer to the complaint against him on the ground that the law under which he was being indicted was unconstitutional. No objection to the jurisdiction of the court was made. The court said: "But how can the quarter session of Philadelphia take jurisdiction of a misdemeanor committed in the District of Columbia? This question lies at the very threshold of this case, and altho defect of jurisdiction is not one of the reasons assigned for demurring, yet, the question is necessarily raised by the demurrer, though not argued by counsel, and must be noticed by us. We are not to be precipitated into the discussion of a grave constitutional question in a case of doubtful jurisdiction?"

If the lack of jurisdiction of the court does not appear on the face of the complaint, the objection to such lack of jurisdiction of the court may be taken only by answer. (Sec. C. C. P.)

Effect of failure to object to the lack of jurisdiction: In discussing the effect of failure to object to the lack of jurisdiction of the court, we must distinguish between lack of jurisdiction over the person, and lack of jurisdiction over the subject-matter.

Lack of jurisdiction over the person: With respect to lack of jurisdiction over the person, the defendant, in order to avoid the submission of his body to the jurisdiction of the court, must raise the question of the court's jurisdiction at the very earliest opportunity. If he gives bail, demurs to the complaint, or files any delatory pleas, or pleads to the merits, he thereby gives the court jurisdiction over his person. (Car-

rington v. Peterson, 4 Phil. 134). Hence, if the defendant fails to object to the jurisdiction of the court over his person, and instead he proceeds with the trial, he shall be deemed as having waived objection to the jurisdiction of the court and the court acquires jurisdiction over his person.

Lack of jurisdiction over the subject-matter: With respect to lack of jurisdiction of the court over the subject-matter, the failure of the defendant to raise such objection either by demurrer or by answer does not constitute a waiver, nor does it vest jurisdiction on the court. When jurisdiction over an offense has not been conferred by law upon a court, the accused cannot confer it by waiver or otherwise. (U. S. v. de la Santa, 9 Phil. 22; U. S. v. Jimenez, 41 Phil. 1.) Lack of jurisdiction over the subject-matter of an action is fatal, and an objection based upon this ground may be interposed at any stage of the proceedings. (U. S. v. Jayme, 24 Phil. 90.) This objection may also be raised on appeal. (U. S. v. Castanares, 18 Phil. 210). In fact, even when no objection to the jurisdiction of the court over the subject-matter has been raised by the defendant, the court may, *ex mero motu,* dismiss the proceedings whenever it clearly appears that the court has no jurisdiction over the subject-matter of the complaint or information. (U. S. v. Castanares, supra).

Where, however, a court is given jurisdiction over a specific class or crimes, that jurisdiction will continue whether that class be enlarged or diminished, or whether the penalty for a violation be increased or decreased. (Chan Lin v. del Rosario, 36 Phil. 561). And when an act of the legislature which penalizes an offense repeals a former act which penalized the same offense, such repeal does not have the effect of thereafter depriving the courts of jurisdiction to try, convict and sentence offenders charged with violations of the old law. (P. P. I. v. Concepcion, 44 Phil. 126). Similarly, the act of a court in assuming jurisdiction over an offense, committed in a territory before jurisdiction on that territory was conferred upon such court, is proper and is not in violation of the expost facto clause of the Philippine Bill. Change of territory after the crime was committed and before the institution of the action does not touch the offense nor change the punishment therefor. (U. S. v. Jueves, 23 Phil. 100). If the court has jurisdiction over the subject-matter of the action as well as over the person of the accused, it is not necessary in order to maintain that jurisdic-

tion, to decide the case correctly. The court has jurisdiction to decide wrongly as well as right. (Ngo Yao Ti v. Sheriff, 27 Phil. 378). Neither does a court lose jurisdiction over a case on the ground that the proof adduced at the trial shows that the offense is exclusively cognizable by an inferior court, if the complaint on its face shows that the offense is properly cognizable by that court. (U. S. v. Mallari and Cueson, 24 Phil. 366.)

Effect of objection of lack of jurisdiction: When sustained. If the objection to the lack of jurisdiction is sustained, the judgment shall be final on the complaint or information demurred to, but it shall not be a bar to a subsequent prosecution for the same offense in the proper court having jurisdiction. (Sec. 23 Code of Crim. Proc.)

When over-ruled: But when the objection to the jurisdiction of the lower court is over-ruled, and the defendant is tried and convicted, and then he appeals, raising the question of jurisdiction again in the appellate court, he has a right to have the question of jurisdiction of the lower court decided, and if, under the facts, the lower court did not have jurisdiction, he is entitled to be discharged. (Davis v. Director of Prisons, 17 Phil. 168).

Effect on the jurisdiction of the court, of the long delay in the execution of the sentence: Does a court, after unreasonably delaying the execution of a judgment, still have jurisdiction over the person of the accused as to entitle it to enforce its judgment?

In the case of Mackelprang v. Walker, this question was answered in the negative. The court said: "Delay in the execution of a sentence in order to give the defendant opportunity to avail himself of his legal rights, such as an appeal or an application for a pardon, does not deprive the court of jurisdiction to enforce its judgment. However, the delay for such purposes must not be unreasonable." The court held that a delay of five months is unreasonable, and that the defendant is entitled to a discharge from custody on a petition for a writ of habeas corpus. (277 Pac. 401, as briefed in the Columbia Law Review, Vol. 30, page 120).

How is the jurisdiction of the court determined: The general rule is that the jurisdiction of the court is determined: (1) by the geographical limits of the territory over which it presides, and (2) the actions, civil and criminal, it is empow-

ered to hear and decide. (U. S. v. Jueves, 23 Phil. 100). In order to determine the jurisdiction of the court in criminal causes, the complaint must be examined for the purpose of ascertaining whether or not the facts set out therein and the punishment provided by law for such facts, fall with the jurisdiction of the court in which the complaint is presented. (U. S. v. Mallari and Cueson, 24 Phil. 366).

But in cases where the offenses charged are transitory, what should the complaint allege in order that we may be able to determine whether or not the court wherein it was presented has jurisdiction to try the offense. In such cases, where the offense was committed in one jurisdiction, and continued in another jurisdiction, the complaint must allege that the offense was committed within the jurisdiction of the court wherein the complaint was filed, and not at the place where it was originally committed. The offender in such cases is triable in any jurisdiction wherein he is found on the ground that there is a new commission of the offense in the jurisdiction where he is found. (U. S. v. Cunanan, 26 Phil. 376).

CHAPTER III

TERRITORY AND JURISDICTION

Introductory statement: The discussion of the criminal jurisdiction of a state is necessarily connected with the description of what constitutes its territory, because the general rule is that a nation's criminal jurisdiction is co-terminus with its territory. A state cannot enforce its laws beyond the limits of its territory so as to make criminal, acts committed within the jurisdiction of another state. To permit it to do so would be to allow it to violate the sovereignty of the state wherein it is enforced. The jurisdiction of a state within its own territory, according to Chief Justice Marshall, is necessarily exclusive and absolute, and to permit any restriction upon it, as for instance, the imposition of the laws of another state upon it, would imply 'a diminution of such sovereignty to the extent of that restriction'.

The territory of a state, defined: The territory of a state comprises the land areas included within its boundaries, the ports, harbors, bays, and other inclosed arms of the sea along the coast, a marginal belt of the sea extending from the coastline out-ward a marine league, or three geographical miles. (Sinco, Philippine Government and Political Law, page 37).

By provision of the Revised Penal Code, the territory of the Philippine Islands is deemed to include also the air space above it, as well as Philippine ships or airships outside of its jurisdiction. (Article 2, Revised Penal Code).

Article 2 of the Revised Penal Code and its relation to Criminal Jurisdiction analysed: Article 2 of the Revised Penal Code provides: "Art. 2. Application of its provisions: Except as provided in the treaties and laws of preferential application the provisions of this Code *shall be enforced* (underlining mine) not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, *but also outside of its jurisdiction,* against those who:

(1) Should commit an offense while on a Philippine ship or airship;

(2) Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;

(3) Should be liable for acts connected with the introduction into these Islands of the obligations and securities mentioned in the preceding number;

(4) While being public officers or employees, should commit an offense in the exercise of their functions;

(5) Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code."

As may be noticed from a reading of this article, the penal laws of the Philippine Islands 'shall be enforced also outside of its jurisdiction'. Does this article contravene the well-accepted doctrine that a state cannot enforce its laws beyond the limits of its territory?

Calhoun, former Secretary of State of the United States, in support of this doctrine has this to say: "We hold that the criminal jurisdiction of a nation is limited to its own dominions and to vessels under its flag on the high seas, and that it cannot extend to acts committed within the dominion of another without violating its sovereignty and independence. * * * No act committed in one country, however, criminal according to its laws, is criminal according to the laws of the other. Crimes, in a legal sense, are local, and are so only because the acts constituting them are declared to be so by the laws of the country where they are perpetrated. Great Britain cannot by her laws make an act committed within the jurisdiction of the

United States criminal within her territories, however immoral of itself and vice versa." (II Moore's Int. Law Digest page 225).

This quotation from Calhoun, which states the principle in very precise terms, negatives the right of a state to extend its penal laws beyond the limits of its territory. Our legislature cannot pass laws purported to operate outside the territorial limits of the Philippines. (Sinco, Philippine Government and Political Law, page 165). Why then does Article 2 of the Revised Penal Code provide that its provisions 'shall be enforced also outside of its jurisdiction?' Does this provision contravene the well-accepted doctrine just stated?

The doctrine in its true sense, does not forbid a state from declaring as criminal, acts committed within the jurisdiction of another state and directed against its citizens, and punishing the offender should he, by some way or other, be later brought within its jurisdiction. What it signifies and what it really intends to cover, is that a state cannot, by its own laws alone, qualify a certain act committed within the jurisdiction of a foreign state as criminal, and make that act criminal under such foreign jurisdiction whether or not its laws consider it criminal, and hence compel that foreign state to punish the acts as a crime although they are not really so under its laws. Or more concretely, the Philippine Government cannot pass a law declaring this and that act, committed within the jurisdiction of China, as criminal, and enforcing such law in China by making such acts criminal in China whether or not the laws of China declare such acts to be criminal.

That is the true meaning of the doctrine as may be gleaned from a close analysis of Calhoun's statement and from a study of the true essence of criminal jurisdiction.

'Criminal Jurisdiction' is the power and authority constitutionally conferred upon a court, a judge, or a magistrate to take cognizance of an offense and to pronounce the judgment or sentence provided by law, after a trial in the manner sanctioned by law as proper and sufficient. The word 'jurisdiction' with reference to criminal proceedings is a term of comprehensive import, embracing every kind of judicial action on the subject-matter, from the filing of the indictment to the pronouncing of sentence. It means to have power to inquire into the fact, to apply the law, and to declare the punishment in a

regular course of judicial proceeding; it is the right of administering justice through the laws, by the means which the law has provided for the purpose. (16 C. J. 147).

It is very evident from this definition of criminal jurisdiction that its very essence is the power and authority *to try and to punish.* It is not an exercise of the criminal jurisdiction to define, through the laws, that this and that act is criminal. Hence, when a state passes a law defining certain acts committed within foreign jurisdiction as criminal, it does not thereby exercise its criminal jurisdiction, and hence it cannot be considered as extending its criminal jurisdiction within that foreign jurisdiction within the meaning of the prohibition. And a law, as a consequence, is unquestionably legal.

Since trial and punishment of crime is the very essence of criminal jurisdiction, when Calhoun said that a state cannot extend its criminal jurisdiction to acts committed within the dominion of another, he simply meant that a state, cannot by its laws, extend its right to 'try and punish' acts committed within the dominion of another state, because the latter state's jurisdiction within its own territory is 'necessarily exclusive and absolute' as to things, persons, and acts committed by such persons within its boundary, and it would be a violation of its sovereignty for other states to get in and 'try and punish' offenders for acts committed within it.

Now, that we have analysed the doctrine already, let us proceed with an analysis of the provision of law in question. Article 2 of the Revised Penal Code says that the provisions thereof shall be enforced also outside of the jurisdiction of the Philippine Islands. This article to my mind, is defectively framed.

First: The article says '* * * the provisions of this Code shall be enforced * * * also outside of its jurisdiction, against those who:

(1) Should commit an offense while on a Philippine ship or airship.'

It is evident from this portion of the article quoted that it is intended to embrace crimes committed *outside Philippine jurisdiction* on a *Philippine ship or airship,* without clarifying what is meant by the phrase 'outside Philippine jurisdiction' and without specifying whether it meant Philippine public, private, or merchant ship or airship.

The phrase 'outside Philippine jurisdiction' covers (a) the high seas or that part of the open ocean upon which all people possess common rights, sometimes called the 'great Highway of nations' (V Moore's Int. Law Digest, page 4677), and (b) the territorial waters of foreign states. Crimes committed in either of these two regions are committed 'outside Philippine jurisdiction.'

The phrase 'Philippine ship or airship' embraces (1) public ships of the Philippine Islands, meaning 'those engaged in the service of the state and under the command of government officers'; Philippine private ships, meaning vessels that are only indirectly under government control, and (3) merchant ships of Philippine registry. (Wilson, Handbook of Int. Law, page 112). The same classification will apply to airships.

Crimes committed in each of the two regions mentioned above, and in each of these three classes of vessels, are governed by slightly differing rules, hence the necessity of making distinctions. And when the framers of the Revised Penal Code made reference to crimes committed outside Philippine jurisdiction and on Philippine ship or airship as being indiscriminately amenable to the provisions of the said Code, they committed, from my modest point of view, a grave scientific error, at least viewing the situation from the accepted precepts of international law. The presence of the phrase 'except as provided in treaties and laws of preferential application' does not to any appreciable degree mitigate the error. The Philippine Islands, by itself or through representation by the United States has not entered into treaties with every foreign nation to cover the different situations embraced by the very general provision of the law under discussion.

With respect to crimes committed on Philippine public ships whether on the high seas or on the territorial waters of a foreign state, Philippine courts have jurisdiction to try the offense. A state has absolute jurisdiction over its public ships abroad. Some writers have sought to account for this by the statement that such vessels are floating portions of the territory of the state to which they belong. (Lawrence, The Principles of International Law, page 211).

With respect to crimes committed on Philippine private ships and merchant ships of Philippine registry, the rule is as follows: (1) When the crime is committed on the high seas, the courts of the Philippine Islands have jurisdiction to try

the offense. (2) When the crime is committed within the territorial waters of a foreign state, there are two opposing views, the French view and the English view. According to the French view, matters happening on board a merchant ship, which do not concern the tranquility of the port, or persons foreign to the crew, are justiciable only by the courts of the country to which the vessel belongs. According to the English view, on the other hand, when a merchant vessel enters a foreign port, it is subject to the jurisdiction of the local authorities, unless the local sovereignty has, by an act of acquiescence or through treaty arrangements, consented to waive a portion of its jurisdiction. (U. S. v. Bull, 15 Phil. 7). Of this two rules or views, it is the last rule, the English rule, that obtains in this jurisdiction because at present the theories and jurisprudence prevailing in the United States on this matter are authority in the Philippines. (P. P. I. v. Wong Cheng, 46 Phil. 729). This rules will be touched again in the discussion of crimes committed on the high seas.

By what I have said in the foregoing, I do not mean to repudiate Article 2, par. 1 of the Revised Penal Code. The provision is simply too general, and as is common with almost all generalities, it has fallen into the same fatal error of embracing within its concept situations that should have not been included.

Second: The rest of the provisions of Article 2 of the Revised Penal Code is to the effect that its provisions shall be enforced also outside of the Philippine jurisdiction against those:

(2) Who should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;

(3) Should be liable for acts connected with the introduction into these Islands of the obligations and securities mentioned in the preceding number;

(4) While being public officers or employees, should commit an offense in the exercise of their functions;

(5) Should commit any of the crimes against national security and the law of nations in Title One of Book Two of this Code.

The Brazilian Law of June 28, 1911, analogous to the portion of Article 2 of the Revised Penal Code quoted above, is as follows:

"ARTICLE 13"

'Brazilians, even out of the Republic, may be tried and sentenced when, in foreign lands, they commit any of the crimes;

(a) Against the independence, integrity and dignity of the native land (Penal Code, articles 87, 92, 94, 101, 102, and 104);

(b) Against the constitution of the Republic and the form of its government (Penal Code, articles 107 and 108);

(c) Counterfeiting (Penal Code, articles 239 and 243);

(d) Forgery of securities of the Federal Government, of the States and Banks (Penal Code, articles 245 and 250).

SECTION 1. The judgment against such criminals, however, becomes effective only upon their return, of their own accord or by extradition, to the country.

SECTION 2. The trial and judgment of foreigners who shall have committed any of the crimes here enumerated shall only take place when the criminals, of their own accord or by force, shall have come into the country.'

It is very note-worthy that while the Brazilian law makes the criminal who has been guilty of these crimes against the life, security, or property of the state, amenable to punishment only 'upon their return, of their own accord or by extradition, to the country', or in case of foreigners, if they 'by their own accord or by force, shall have come into the country' our law makes the sweeping statement that 'its provisions shall also be enforced outside of Philippine jurisdiction'. The Brazilian law in very precise terms embodies the doctrine that altho a state has the power to qualify as criminal, acts committed within the jurisdiction of a foreign state, it nevertheless, does not have the power to make its laws operative within such foreign state, and that it can punish the offenders only when they come within its jurisdiction.

Our law, on the other hand, gives the impression that the provisions of the Revised Penal Code will be made operative within foreign jurisdiction. The phrase 'shall be enforced also outside of its jurisdiction' points out very strongly to this interpretation. The writer, however, humbly submits, that this is not the correct interpretation of the phrase. I have very strong reasons to believe that the framers of the Revised Penal Code never intended to give that phrase that interpretation. It is outrageous even to conceive that so enlightened a group of

jurists as those that framed the Code could have intended by that provision to empower our courts to extend its arms into the territories of foreign countries in order to try and to punish offenders that fall under the qualification of Article 2. Article 2 simply is defectively framed.

Third: There is no necessity for the insertion of paragraphs 2 to 5, Article 2 of the Revised Penal Code. "It may be observed that these provisions refer to acts involving the property, security, or life of the state itself. * * * In American jurisprudence, a distinction is made between ordinary crimes against private individuals, and crimes against the security of the State. It has been ruled that with respect to the first class of crimes, it is necessary that the legislative authority must expressly provide for their extra-territorial application; but as regards the second class of offenses such express provision is not necessary. In explaining the reason for this distinction, the United States Supreme Court said: " 'The necessary locus, when not specially defined, depends upon the purpose of Congress as evidenced by the description and nature of the crime, and upon the territorial limitation upon the power and jurisdiction of a government to punish crimes under the law of nations. Crimes against individuals or their property, like assaults, murder, burglary, larceny, robbery, arson, embezzlement, and frauds of all kinds, which affect the peace and good order of the community, must of course, be committed within the territorial jurisdiction of the government where it may properly exercise it. If punishment of them is to be extended to include those committed outside the strict territorial jurisdiction, it is natural for Congress to say in the statute, and failure to do so will negative the purpose of Congress in this regard. We have an example of this in the attempted application of the prohibitions of the anti-trust law to acts done by citizens of the United States against other such citizens in a foreign country. American Banana Co. v. United Fruit Co., 213 U. S. 347. That was a civil case, but as the statute is criminal as well as civil, it presents an anology. But the same rule of interpretation should be applied criminal status, which are, as a class, not logically dependent on their locality for government's jurisdiction, but are enacted because of the right of the government to defend itself against obstruction or fraud wherever perpetrated, specially if committed by its own citizens, officers, or agents.

Some such offenses can only be committed within the territorial jurisdiction of the government because of the local acts required to constitute them. Others are such that to limit their locus to the strictly territorial jurisdiction would be greatly to curtail the scope and the usefulness of the statute and leave open a large immunity for frauds easily committed by citizens on the high seas and in foreign countries as at home. In such cases, Congress has not thought it necessary to make specific provision in the law that the locus shall include the high seas and foreign countries, but allows it to be inferred from the nature of the offense' " (Sinco, Philippine Government and Political Law, p. 42).

Recapitulating: Paragraph 1, considered with the foregoing clauses, is too general, and hence inaccurate. However, it embodies, in a condensed form although defectively, the accepted principles of international law with respect to a nation's jurisdiction over its vessels abroad. Paragraphs 2 to 5, unlike the Brazilian law on the same subject, is ambiguously framed. It refers to offenses involving the property, security or like of the state itself, with respect to which no express provision of law is necessary in order to entitle the state to punish their perpetrators. These paragraphs therefore, simply gave expression to an already accepted rule. It embodies the French qualification to the strict territorial jurisdiction principle to the effect that although a state has no power to punish acts committed by aliens abroad, that state nevertheless, acquires such power if the acts committed are offenses directed against the safety of the state or its financial credit. The phrase 'shall be enforced * * * also outside of its jurisdiction' is not to be interpreted to mean that the Revised Penal Code shall be made to operate outside the territorial limits of the Philippine Islands in the sense that acts committed in foreign countries which are criminal under the provisions of this Code shall also be criminal in the country where it was committed irrespective of whether or not the laws of the latter country make it so. It should be interpreted, rather, to mean that a person outside Philippine jurisdiction, who commits an act punishable under the provisions of the Revised Penal Code and falls under any of the qualifications set forth in Article 2 thereof, shall be amenable to punishment in our courts, should he, by some way or other, be brought within our jurisdiction.

CHAPTER IV

SITUS OF PARTICULAR OFFENSES

Crimes, where triable: Except Section 6, par. 4 of the Code of Criminal Procedure which requires that the complaint or information must state that the offense was committed within the jurisdiction of the court before whom the information or complaint is presented, and Section 19, par. 1 of the same Code, which makes it a ground of demurrer, should the complaint on its face show that the offense charged was not committed within the jurisdiction of the court, there are no other provisions of law which require expressly that crimes should be tried at the place where they were committed. But while the laws here do not specifically and in terms require it, however, it is the established custom and the uniform holding that criminal prosecutions must be brought and conducted, except in cases specially provided by law, in the province where the crime is committed. (Manila Railroad Co. v. Atty. General, 20 Phil. 423). The interest of the public require that, to secure the best results and effects in the punishment of crime, it is necessary to prosecute and punish the criminal in the very place, as near as may be, where he committed the crime. (id) Offenses properly cognizable by Courts of First Instance are triable in the Courts of First Instance of the province where they offense was committed; and where it is properly cognizable by a Justice of the Peace, it shall be tried in the Justice of the Peace Court of the municipality were it was committed. This is the general rule. This rule, however, admits of some modifications which will be noticed later, particularly in those cases where the situs of the crime is not easily determinable, or in those cases were a crime is localized in more than one jurisdiction.

Transitory offenses: By transitory offenses is meant offenses having more than one situs, either because they were committed in one jurisdiction and continued into another, or because having been began, in one jurisdiction, the commission thereof is completed in another jurisdiction. With respect to the first place, the rule is that the offender is triable in any jurisdiction where he may be found continuing the commission of the offense. For instance, a thief who steals goods in country X, and then subsequently takes the stolen goods to county Y and is apprehended in Y, the courts of country Y has the

right to try him on the ground that there is a new commission of the offense wherever he takes the stolen goods. In cases like this, the complaint should allege that the offense was committed within the jurisdiction of the court and not at the place where it was originally committed. (U. S. v. Cunanan, 26 Phil. 376).

But suppose the offender commits robbery in one jurisdiction by taking goods by the use of force upon either persons or things, and subsequently brings such stolen goods into another jurisdiction, of what offense may he be indicted in the latter jurisdiction, theft or robbery? Altho the offense constitutes robbery in the place of original commission, it is but theft in the place were he subsequently carries the goods because no violence upon either person or thing has been committed in the latter place. Should he be indicted, however, in the place of original commission, within whose jurisdiction the violence upon person and things has been committed, there is no doubt about the offender's liability to indictment for robbery.

Similarly, a man who erects a nuisance in a river or stream in one jurisdiction, is liable to indictment in every jurisdiction into which such river flows and causes damage to either persons or property.

Examples of the second class of transitory offenses are quoted later in this chapter.

Abduction: In a case where the girl was taken with her consent from Manila, and then carried to Pasig, Rizal Province, both the judges of the Court of First Instance and that of the Province of Rizal are competent to try the offense of abduction. It is true that the offense was committed in the city of Manila, but it may well be said that it was consumated in Pasig. (U. S. v. Bernabe, 23 Phil. 154).

Accessories before or after the fact: Crimes are punishable where they are committed. Hence, accessories before or after the fact, to offenses committed by another in another state, are triable in the state where they acted as accessories and not in the state where the substantive crime was committed. (Carlisle v. State, 21 S. W. 358; State v. Chapin, 65 Am. Rec. 452; State v. Wycoff, 31 N. J. L. 65 etc.)

Brigandage: In a case where brigandage was committed in the Province of Rizal, but the brigands were caught in the city of Manila, the courts of the city of Manila has jurisdiction to try them because of the provisions of Act 518, Sec. 3, which

declares that the courts of the place where the offenders are captured has competent jurisdiction to try the offense. (U. S. v. Marcelo, 12 Phil. 780).

Estafa: In a case where the accused entered into a contract of agency in the city of Manila, by virtue of which he was obligated to render his accounts to his principal in Manila, and said accused as such agent collected for his principal a certain amount of money in Cebu, and for which money he failed to account to his principal in Manila because he misappropriated same in Cebu, it was held that the courts of Manila is competent to try him. (U. S. v. Cardell, 23 Phil. 207.) But may the court of Cebu also try him? This point which was left undecided in the Cardell case was settled in the case of U. S. v. Santiago (27 Phil. 408) in which it was held that the province where the misappropriation took place is also competent to try him. The holding of the court is as follows: 'An insurance agent intrusted with the collection of premiums of policies in Iloilo who appropriates his collections for his own benefit there, though by his contract the premiums collected were payable at the office of the Insurance company at Manila, is triable for the crime of estafa in the Court of First Instance of Iloilo or the city of Manila. Similarly, where a railroad conductor collects one peso and twenty-centavos from a passenger and issued a false ticket for a shorter journey for which the charge is eighteen centavos, the estafa is committed where his account was rendered and the stub of the false ticket was turned in. Jurisdiction is vested in the court where the accused made use of the document (the stub of the ticket) which is alleged to be false. (U. S. v. Reyes, 1 Phil. 249.)

Forgery: The situs of forgery is the place where the forged instrument is made use of or where it was uttered with intent to defraud, and not in the place where the false writing was made. (Stewart v. Jessup, 19 Am. Rep. 739). The doctrine enunciated here is in consonance with the doctrine of constructive presence discussed somewhere else in this work. The forged instrument is the criminal agency set in operation by the offender which takes effect at the place where it is uttered or made use of. He is considered, in legal contemplation, as accompanying said agency in the place where it takes effect, and hence he is legally triable in that place.

Kidnapping: Where persons are kidnapped and detained in Bulacan, then taken to Nueva Ecija, defendants may be tried

and punished in Bulacan where the crime was commenced and consummated, though continued elsewhere. (U. S. v. Laureaga, 2 Phil. 71).

Libel: Libel is triable in every jurisdiction where the libelous article is published or circulated.

Perjury: Perjury is triable in the court of the place within whose jurisdiction the perjured affidavit was made use of, irrespective of wherever it was subscribed and sworn to. (U. S. v. Cañet, 30 Phil. 371.)

Poisoning: In a case where the offender hands the poison to the victim in one county, but the victim takes the poison into his system in another county, and subsequently dies in another county, the offender is triable in the second county where the crime of administering poison is consummated. (Robbins v. State, 8 Ohio 131).

Criminal conspiracy: A criminal conspiracy is completed where the conspiracy is entered into, without regard to the further perpetration of the illegal act which is the subject of the conspiracy. Hence, conspirators are triable in the state where they enter into the conspiracy irrespective of the place where the subject of the conspiracy was carried out. (Dealy v. United State, 152 U. S. 539; U. S. v. Britton, 108 U. S. 204). This rule holds even though the act to be performed is not illegal in the State where it is to be performed. It is sufficient if the subject-matter of the conspiracy is illegal within the place where such conspiracy was entered into. (Lacey v. Palmer, 31 L. R. A. 822).

Under the provisions of Article 8 of the Revised Penal Code, the conspiracy and proposal to commit a felony shall be punishable only in those cases where the law specially provides a penalty therefor. And the law as it now stands, provides for a penalty for conspiracy to commit treason (Art. 115); rebellion and insurrection, (Art. 136); and sedition (Art. 141). The treason, rebellion and insurrection provided for in the Revised Penal Code are those committed against the United States Government or the Philippine Government. Consequently, a conspiracy to commit any of these crimes concocted within Philippine jurisdiction but directed against any other government other than those of the United States or the Philippine Islands, is not covered by the provisions of law cited.

But may not such conspiracy be prosecuted under some other provision of the Revised Penal Code? The acts of indi-

viduals, whether Filipinos or foreigners, of conspiring against the government of another state is highly reprehensible, and it would be very revolting to our sense of justice if no provision is made in our laws for their punishment.

The writer submits that such a provision is found in Article 118 of the Revised Penal Code which imposes the 'penalty of reclusion temporal upon any public officer or employee, and that of prisión mayor upon any private individual, who, by unlawful or unauthorized acts, provokes or gives occasion for war involving or liable to involve the Philippine Islands or exposes Filipinos to reprisals on their persons or property.'

Crimes committed on the High Seas: The term 'High Seas' explained and defined: The term high sea as used by legislative bodies, the court, and text writers, has been construed to express a widely different meaning. As used to define the jurisdiction of admiralty courts, it is held to mean the waters of the ocean exterior to low-water mark. As used in international law to fix the limits of the open ocean, upon which all people possess common rights, the 'great highway of nations' it has been held to mean only so much of the ocean as us exterior to a line parallel with the shore and some distance therefrom, commonly such a distance as can be defended by artillery upon the shore, and therefore, a cannon shot or marine league (three nautical or four statute miles). (Moore's Int. Law Digest, Vol. V, page 885).

The term 'high seas,' therefore, is used in two senses; to wit: in the sense used to define the jurisdiction of admiralty courts, in which sense it is deemed to include the territorial waters of the state; and secondly, in the sense in which it is understood in international law, meaning that region of the open ocean beyond the territorial waters upon which people possess common rights. The following discussion refers to crimes committed on the 'high seas' as understood in international law.

Jurisdiction of crimes committed on the high seas: The question of jurisdiction over crimes committed on the high seas in which both the offender and the victim are on the same ship presents no special difficulty. As stated already in a previous discussion, crimes committed on the high seas on a public, private or merchant ship, are justiciable by the courts of

the country under whose flag the vessel sails. But where the question of jurisdiction enters in a case where the offender is in one ship of one nationality, and the victim is in another ship of another nationality, the opinion of jurists differ.

Chief Justice Cockburn in deciding the case of the S. S. Franconia, differentiates between a case where the offending acts of the person charged is intentional and a case where such acts are unintentional. In the first case, the person charged is considered contructively present in the other ship, and hence is amenable to the jurisdiction of the state under whose flag such vessel flies. In the second case, however, were the offending acts are unintentional and arose simply from negligence, the offender cannot be considered as constructively present in the other ship, and hence cannot be tried by the state to which that ship belongs or under whose flag it sails.

This differention of Chief Justice Cockburn was expressly repudiated in the case of S. S. Lotus decided by the Permanent Court of International Justice which ruled that the courts of both states have concurrent jurisdiction to try the offender. The court said that it is immaterial whether the offending acts were intentional or unintentional, so long as the effects of such acts are felt in the other ship, the offender will be considered as constructively present in that ship, and hence amenable to trial in the courts of the state under whose flag that ship sails, without prejudice, however, to the concurrent jurisdiction of the courts of the state to which belongs or under whose flag it sails.

But suppose a case arises in which the courts of the Philippine Islands legally has jurisdiction to try an offense committed on the high seas, which of our courts may assume such jurisdiction? On this point, Section 1 of Act 400 of the Philippine Commission, amending Section 56 of Act 136, provides as follows: referring to the jurisdiction of the Courts of First Instance: "Of all crimes and offenses committed on the high seas or beyond the jurisdiction of any country, or within any of the navigable waters of the Philippine Archipelago, on board a ship or water-craft of any kind registered or licensed in the Philippine Islands in accordance with the laws thereof. The jurisdiction herein conferred shall be exercised by the Court of First Instance in any province into which the ship or water-

craft upon which the crime or offense was committed shall come, after the commission thereof: PROVIDED, nevertheless, that the court first taking cognizance thereof shall have jurisdiction of the same to the exclusion of all other courts in the Philippine Islands."

CHAPTER V

THE THEORY OF CONSTRUCTIVE PRESENCE

Introductory statement: The theory of constructive presence, briefly speaking, holds that a person located in one jurisdiction who commits a criminal act that takes effect on another jurisdiction, is for purposes of the criminal law, considered as constructively present in the jurisdiction where his acts take effect, and hence, is amenable to prosecution therein. This theory, or rather doctrine, has from the early past, created a good deal of interest and legal strife, and has evoked comments from the greatest legal thinkers of the world. The truth is, there is much in the theory that intrigues the mind, stirs the imagination, and consequently, inspires them to make the most deliberate and passive scrutiny into the very depth and bottom of the question. Holmes, Moore, Campbell, Gray, and a host of other legal luminaries have studied the question and have arrived at conclusions which are by no means harmonious.

During this day and age, when the unprecedented progress in the realm of science has made more possible the commission of crimes against both persons and property located in one country by criminals situated in another, the theory of constructive presence presents an even greater inducement for study. True, there are doctrines, court decisions, and writings of eminent jurists, enough to warrant a statement that the theory is fairly well embedded in the jurisprudence of almost all civilized countries. But the foundation on which it rests, however, is not yet as secure and as solid as it should be. Somewhere, intermittently, voices both big and small, could be heard, protesting against the permanent acceptance of the doctrine into our code of immutable law.

The theory explained: By the theory of constructive presence the law deems that a crime is committed in the place where the criminal acts take effect. Hence, in many circumstances, one becomes liable to punishment in a particular jurisdiction while his personal presence is elsewhere. Even in this way, he may commit an offense against a state or county upon

whose soil he never set foot. (1 Bishop, Crim. Proc. 53). His personal presence being elsewhere, he is, nevertheless, in contemplation of law considered constructively present in the place where his acts take effect. In a leading case in which the theory of constructive presence was discussed by the court, it was held: "Of course, the presence of the accused within this state is essential to make his act one which is done in this state; but the presence need not be actual. It may be constructive. The well-established theory of the law is that, where one puts in force an agency for the commission of crime, he, in legal contemplation, accompanies the same to the point where it becomes effectual." (Simpson v. State, 17 S. E. 984.)

By fiction of law, the offender is considered present where he actually is not, and he is made amenable to prosecution in a jurisdiction within those territory he never set foot. This fiction has been accepted in the criminal jurisprudence of almost all countries. John Basset Moore says: "The principle that a man outside of a country wilfully puts in action a force to take effect in it is answerable at the place where the evil is done, is recognized in the criminal jurisprudence of all countries. And the methods which modern invention has furnished for the performance of criminals in that manner has made this principle of constantly growing importance and of increasing frequent application." (II Int. Law Digest, page 243.)

Courts having jurisdiction: In this kind of offense, the court of the state within whose territory the acts too and the court of the state where the perpetrator actually may sometimes have concurrent jurisdiction to try the offense the former state by reason of the locality of the act, and the latter state by reason of the locality of the actor. The latter state, however, may punish the perpetrator or may give him up to the other state; or, if it see fit, it may decline to do either. But the fact that a state may be unable to obtain jurisdiction over the offender is not a test of its jurisdiction over the offense. (II Int. Law Digest, p. 243.)

Application of the theory of constructive presence: The application of the theory of constructive presence presents no special difficulty when the crime committed is one that consist of only one stage, i. e. one that is deemed consummated by the commission or happening of one single act without any intervening or intermediate stages; or where intermediate stages being present, every stage of the crime as its situs or is localized

only in one jurisdiction. To illustrate my point: Suppose A, residing in country X, by means of a time-bomb sent through the mails, destroys property situated in country Y. There would be no doubt about A's being indictable for the offense of illegal destruction of property in country Y. The doctrine of constructive presence if clearly applicable. In this case A, who is residing in country X puts in operation an unconscious agency for the commission of a crime which took effect in country Y. The law considers him as accompanying such agency to the point where it becomes effectual, and hence, he is considered as being constructively present in Y. Again, suppose C, residing in country Z, by means of a shot-gun wounds D who was then just across the border in country W, killing him immediately. In this case both the wounding and the killing occurred in country W. There would be no question that C's criminal acts took effect in country W, and hence, there would be no special difficulty in applying the theory of constructive presence. But suppose D, instead of dying immediately, survived for sometime, and death occurs in country U where he went for treatment. The wounding occurred in one jurisdiction, while death occurred in another jurisdiction. Under these circumstances, the question of the applicability of the theory of constructive presence presents a singular difficulty. Within what jurisdiction is C triable, in country W where the wounding took place, or in country U where death occurred? Will the theory of constructive presence be applicable? If so, within what jurisdiction should we consider the criminal acts of C to have taken effect? If not, what country has the right to try C, and on what ground? The theory of constructive presence says that the perpetrator of the offense shall be considered as accompanying the agency sent in operation by him to the point where it becomes effectual. But where did the agency of C become effectual? Is it in country W, or in country U?

It is on these points that jurists have differed. One group of authorities contend that where the wounding took place in one jurisdiction, but death occurred in another, the jurisdiction where death took place has the right to try the offender. The leading case expounding this view is that of Tyler v. People, (8 Mich. 820), the ruling in which was later approved and accepted by the Supreme Court of Massachusetts in the case of Commonwealth v. Macloon. (101 Mass. 1) in which Justice Gray rendered the opinion of the court. He says that if one's

'unlawful act is the efficient cause of the mortal injury, his personal presence at the time of its beginning, its continuance, or its result, is not essential.' It should be noted, however, in this Macloon case that the wounding took place on the high seas, hence not under any particular jurisdiction, and further, that there is a law in Massachusetts expressly providing for the punishment of offenders causing death within its territory in the manner we are describing.

The opposite view is expounded by Justice Campbell in his dissenting opinion in the case of Tyler v. People (supra) in which he stated that where the wounding took place in one jurisdiction and the death occurred in another, the theory of constructive presence is not applicable. He says that by the theory of constructive presence 'the crime shall be regarded as committed where the injurious act is done. A wounding must of course be done where there is a person wounded, and the criminal act is the force against his person. That is the immediate act of the assailant whether he strikes with a sword or shoots a gun; and he may very reasonably be held present where his forcible act becomes operative.' And then he proceeds: 'But when the bullet rests or the sword is withdrawn, he ceases to act. And the suffering which the person subsequently undergoes is not an act, but a mere consequence, a distinction that is real and essential and which cannot be disregarded. * * * There is but one guilty act which consists of the blow or the wounding, inflicted with malicious intent; and the suffering or death are both merely effects of that one act. There can be no criminal act without a co-existing criminal intent. If there is no act done within this state with criminal intent, the state has no power to punish; for no crime has been committed within its jurisdiction. * * * It is the act which breaks the peace, that sets an evil example, and that causes all the mischief. And it would be introducing a principle which has no sanction in the common law, and for which I have not been able to see the reason, to hold that a man may be punished for results *where* he cannot be punished for the acts that caused them.'

Obviously, the point of view of Justice Campbell is that the law punished the acts and not the effects, and to substantiate his contentions, he cites several English cases, to wit:

"Rex v. Hargrave, 5 C. & P. 170: Justice Paterson says in part, 'The giving of the blows which caused the death con-

stitutes the felony. The languishing alone which is not any part of the offense is laid in Kent.'

The reason given by East & Lord Hale, why before the statute of 2 & 3 Ed. VI, ch. 24, an indictment lay in the country in which the stroke was delt is because that alone is the act of the party and the death is but a consequence.

In Cole's Case, Plowder, 401, Cole was indicted for the murder of Elizabeth Pembroke, who was wounded on the 12th day of February, and died on the 18th day of June. Cole pleaded an intermediate pardon of all offenses, misdemeanors and felonies. It was insisted by those who opposed the pardon that his act did not become a felony until the death, and therefore, was not one of the felonies pardoned. But the 'justice agreed that the pardon discharged him, because the wound given by the prisoner was the cause of the felony, the giving of which wound was an offense and misdemeanor against the queen; and that being pardoned by the act, all the consequences that followed from the said offense are also pardoned.

In Riley v. The State, 9 Humph 646, where the question of venue under the constitution was involved, the injury and death being in different places, the court says: 'Altho at common law it was said that the offense was not complete until the death, yet it would be doing violence to language to say that the offense was committed in the county where death took place, altho the stroke was committed in another county.'

This dissenting opinion of Justice Campbell was cited favorably in the case of Simpson v. State (17 S. E. 984) decided by the Supreme Court of Georgia when the court said, "There is, however, a clear distinction between cases like the one just cited, where a wound is inflicted in one jurisdiction and death ensues in another, and cases like the present, where the accused in one state puts in operation a force which takes effect in another. On page 343 of 8 Michigan Reports, this distinction is clearly stated by Justice Campbell. He says the doctrine of constructive presence is not applicable to a case with which he was then dealing (meaning a case where the wounding took place in one state and death occurs in another)."

Re-stating the conclusion arrived at by the two opposing views, we have:

Justice Gray who contends that the offender is triable in the place where the death took place, and not where the wounding was committed;

Justice Campbell, who contends that the offender is triable in the place where the criminal acts were committed, irrespective of the place where the effects or consequences of such criminal acts were felt, and that the doctrine or theory of constructive presence is not applicable to such cases.

The writer humbly submits that the theory of Justice Campbell is the better view—to the extent that the law punishes the acts and not the effects, and that since it is the criminal acts that are punished, the proper situs of the offense is the place where such acts were committed.

Our penal laws punish crimes primarily for the acts committed, and secondarily for the intent of the perpetrator in committing the acts. The effects of such criminal acts, in so far as the culpability of the offender is concerned, is immaterial, the effects being necessary only for the purpose of graduating the penalty for the offense of which he is held guilty. It is for this reason that even in attempted or frustrated offenses, where the criminal acts have been partly or wholly perpetrated, but where the intended effects are not felt at all, the actor is also considered culpable. It is true, the penalty meted out to him is lesser in degree, but this does not lessen his culpability in any way. He is culpable just the same, and since it is his culpability that makes him amenable to the court's jurisdiction, it is the court within whose jurisdiction those culpable acts were committed that has the right to try him.

From the point of view of procedure, I am also of the opinion that the courts of the place where the effects alone are felt cannot try him. The degree of punishment which should be inflicted on an offender, cannot be determined by considering the effects of the criminal acts alone. There are circumstances attendant to the commission of every criminal act which the court must needs take into account—circumstances that may either increase, decrease, and even avoid the infliction of the penalty. These circumstances, recognized in law, have been denominated aggravating, mitigating, and justifying or exempting circumstances, respectively.

Does the court of the place where the effects of the acts alone are felt, have that same full competence to take cognizance of these different attendant circumstances as that possessed by the court of the place where they were committed? The question answers itself. And unless we want to favor those guilty of aggravated offenses, to aggravate the penalties

for those entitled to mitigation, or to convict, to imprison, or to hang those who should be acquitted, it would be down-right folly to vest jurisdiction in the court where the effects alone are felt and known.

It is interesting to note that the weight of authority in the United States is that the offender is triable in the place where the blow was given or where the criminal acts take effect, and not where the death took place. (U. S. v. Guiteau, 47 Am. Rep. 247; Ex parte McNeely, 32 Am. Rep. 831; State v. Gessert, 21 Minn. 369; State v. Bowen, 16 Kan. 475.) In these cases, however, the court applied the doctrine of constructive presence contrary to the view of Justice Campbell to the effect that the doctrine is not applicable.

Another very interesting point for discussion in connection with the doctrine of constructive presence, is presented in a case where the crime committed, a killing for instance, committed by one person actually in one jurisdiction, and taking effect in another jurisdiction, was not intentional, but rather, one arising purely from negligence. May the offender, for his negligent act which caused the killing be considered constructively present at the place where such negligent acts took effect, and hence, be held amenable to its laws?

Chief Justice Cockburn in the case of the S. S. Franconia answered this question in the negative. He says in part: 'If he hurls a stone, or discharges a bullet from a gun or pistol at another person, at a distance, the instrument he used passed from him, the stone or bullet having left his hand, has to make its way through a given space before it strikes the blow it is intended to inflict. But the blow is as much the act of him who casts the stone or fires the gun, as though it had taken effect immediately. In such a case, the act, in lieu of taking effect immediately, is a continuing act till the end has been effected, that is, till the missile has struck the blow, *the intention of the party using it accompanying it throughout its course.* (underlining mine)

According to him, it is for this reason—that the intention of the offender accompanies the missile, that he is considered constructively present in the place where it took effect, and hence amenable to its criminal jurisdiction. Where no criminal intention is present, the same reasoning would not apply, as for instance, in the case of killing due to negligence. He says further, "Whether the same principle would apply to a

case of manslaughter arising from the running down of another ship through negligence, or to a case where death is occasioned by the careless discharge of a gun, is a different thing, and may, indeed, admit of serious doubt. For in such a case, there is no intention accompanying the act into its ulterior consequences. The negligence in running down a ship may be said to be confined to the improper navigation of the ship occasioning the mischief; the party guilty of such negligence is neither actually, nor in intention, and thus constructively, in the ship in which the death takes place." If the ramming of the ship had been intentional, then the case would have been different, because he said that although the act of the offender is confined to running his ship against another, it is, nevertheless, his act which caused the ship ran down to sink and to cause the death of the crews therein.

It is apparent from the above quotation from Chief Justice Cockburn that criminal intent is vitally essential in the application of the doctrine of constructive presence. It is the fact that the intent of the offender accompanies the agency which he puts into motion that he is considered constructively present in the place where his criminal agency takes effect. He is considered, in legal contemplation, present in the place where his criminal intent becomes effective although actually he is somewhere else. This statement sounds more like an abstract proposition than a sound principle of law. Yet, studied critically, there is more actuality in the statement than would be revealed by a casual perusal.

Criminal intent alone, is not sufficient to make a man criminal. No law could punish a man for his thoughts alone. There must be the overt acts to transform his thoughts into deeds, and the deeds as committed must be qualified as criminal by the laws of the jurisdiction where they were felt in order that the actor may be considered a criminal. The criminal intent and the motion carrying that intent into motion must concur in order that there may be a crime. And when these two elements are present, it is immaterial, logically speaking at least, where the author was physically at the time the acts where committed. The criminal's physical presence is essential to the existence of a crime only to *impart the mechanical parts of the offensive acts.* But the mechanical parts of a crime may be imparted by a criminal and make it take effect within the jurisdiction of a state whether he is *within or with-*

out it. In either case, considering crime from the conventional view-point as an offense against the 'Justice of the State,' a crime has been committed within that state—which goes to show that physical or actual presence within a state is not essential to the commission of a crime within that state. He is considered constructively present within that state, his constructive presence being represented within that state by his *animus* or *intent* that has crystallized into overt acts. The overt acts alone, unaccompanied by the other element of criminal intent, are without individuality or personality, or more precisely speaking, without those attributes which are necessary in order to impart criminality to them, and hence, they alone cannot represent the personality of the actor. Rationality is to a responsible human being what criminal intent is to a crime. Take away rationality, the being remains a being, but he becomes a non-entity in law in so far as his liability for his acts is concerned. In the same way, take away criminal intent from criminal acts. The acts remain acts, but they lose their criminal attributes, and should also cease to be punishable by law. This is the fundamental principle underlying those laws which exempt from criminal liability acts committed by insanes and minors under 9.

True those overt acts, although unintentional, may result in serious injury. But injurious consequences are not the only test of criminality. Were it the only test no amount of sophistry could prevent us from qualifying as criminal those injuries arising from a falling tree or a rolling boulder set into motion by the forces of nature. Between this kind of injury and those arising from the unintentional acts of a human being, there is no precise difference except perhaps that in the first, the agency which caused the injury was set into motion by the insensible forces of nature, while in the second the agency was set into motion by a rational human being. But is not a man, acting unintentionally just as insensible as that force of nature is *in so far as that one specific act is concerned?*

The argument of Chief Justice Cockburn which was quoted earlier in this discussion was repudiated by the Permanent Court of International Justice in its decision on the case of the S. S. Lotus (Hudson, Cases on International Law, page 719), when it said in part: "It has been sought to argue that the offense of manslaughter cannot be localized where the mortal effect is felt; for the effect is not intentional and it cannot be

said that there is, in the mind of the delinquent, any culpable intent directed towards the territory where the mortal effect is produced. In reply to this argument it might be observed that the effect is a factor of outstanding importance in offenses such as manslaughter, which are punished precisely in consideration of their effects rather than of the subjective intention of the delinquent."

The Permanent Court of International Justice, paraphrasing its decision, holds that a man, actually in one jurisdiction, who unintentionally or negligently commits a crime such as manslaughter, which takes effect in another jurisdiction, is amenable to the laws of the latter jurisdiction, simply on the ground that in crimes of that class the actor is punished in consideration of the effects of his acts rather than for his subjective intention. He is considered, although the opinion does not say so, as accompanying his acts to the place where they take effect, i. e. constructively present there.

This reason advanced by the court would be readily acceptable where both the offender and the offended are situated within the same jurisdiction. In such a case there would be no necessity of invoking the doctrine of constructive presence in order to make the offender punishable. Under such circumstances, he would unquestionably be liable to punishment even for his negligent acts. But the fact that the doctrine of constructive presence, must of necessity be invoked in order to make the offender liable, to my mind, makes a great deal of difference.

Between the place or jurisdiction where the actor actually is situated at the time the acts were committed unintentionally, and the place or jurisdiction where those acts take effect, there is an intervening space, a region that must be bridged, in order that the arms of the law of the offended state may, without doing violence to the integrity of the other state, reach out for the one guilty of the offense and mete out to him the penalty proper for the crime he has committed. That bridge may be purely imaginary. But the fact is there must be a bridge, resting on some foundation of reason or propriety, if not of law.

In crimes of the sort we are discussing, it is the animus, the intent of the actor that bridges this gulf, the very essence of the acts that brings the actor, in contemplation of law, constructively into the place where his acts stop and take effect. That intent to offend is the outrage against the 'Justice of the

State' that entitles that state to reach out its arms right into the territory of the other state to apprehend the offender in order that it may vindicate its outraged dignity. It is this animus to offend, this intent to commit a crime that furnishes the bridge to span the gulf which intervenes. Just as it is the flesh that represents a man's physical and actual presence, so is it the animus, the intention, the essence that would represent him constructively.

I have tried to demonstrate in the foregoing paragraphs how very essential it is that criminal intent accompany the overt acts in order that it may represent the actor, constructively at least, in the region where such overt acts take effect. If criminal intent be then necessary in order to hold an offender constructively present in a place where he actually is not, then it follows that he cannot be held criminally liable in one jurisdiction for negligent—that is, unintentional—acts committed within another jurisdiction.