

Need An Absolute Pardon Be Accepted?

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ONE of the accepted definitions of pardon is: "A pardon is an act of grace, proceeding from the power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed." (*U. S. v. Wilson*, 32 U. S. 150.)

Pardons are of different kinds. They may be absolute or full, partial, or conditional. "A full pardon is a remission of guilt; it releases the offense and obliterates it in legal contemplation. 1 Bish. Cr. Law, sec. 898; *Osborn v. U.S.*, 91 U.S. 474. * * * A full pardon blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. *Ex parte Garland*, 4 Wall. (U. S.) 33. * * * It is partial where it remits only a portion of the punishment, or obsoles from only a portion of the legal consequences of the crime; conditional, where it does not become operative until the grantee has performed some specified act, or where it becomes void when some specified event transpires. 1 Bish. Cr. Law, sec. 914." (*Carr v. Smith*, 53 Am. Rep. 395.)

In the Philippines the granting of pardons resides in the President of the Commonwealth by virtue of Sec. 11, par. 6 of the Constitution of the Philippines which provides that: "The President shall have the power to grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction, for all such

offenses, except in cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper to impose. He shall have the power to grant amnesty with the concurrence of the National Assembly." It is evident from the provision above quoted that the President has full power to grant all kinds of pardon whether absolute, partial, or conditional. In order to make the power of the President in granting conditional pardons more effective we have in our statute books Act No. 1524 entitled "An Act providing for the enforcement of conditions made by the Governor-General in the exercise of his discretion in granting conditional pardons."

It has been the uniform ruling of the courts both in the Philippines and in the United States that a conditional pardon must first be accepted before it becomes valid. Thus, in the case of *Ex parte Wells* (18 How. (U.S.) 307) "it was said that a conditional pardon has no force until accepted by the condemned." (*Cabantag v. Wolfe*, 6 Phil. Rep. 273.) The reason why a conditional pardon should first be accepted is obvious. The condition may be less acceptable to him than the original punishment, and may in fact be more onerous. (*Cabantag v. Wolfe, supra.*) So that in the case of *De Leon v. Director of Prisons* (31 Phil. Rep. 60), it was held that a conditional pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance.

But if acceptance is a condition precedent to the validity of a conditional pardon, can the same be said of an absolute pardon? In other words, need an absolute pardon be accepted in order that it may be valid? Philippine cases do not resolve this question one way or the other. In attempting to solve this question we have to resort to adjudicated cases in the United States. In the State courts the doctrine is well-settled that an absolute pardon must first be accepted before it becomes effective. (See *Weigel v. McCloskey*, 166 S.W. 949 citing *Redd v. State*, 65 Ark. 485; 47 S.W. 119; *Ex parte Hunt*, 10 Ark. 284. See also *In re Charles*, 222 Pac. 606.) But the Supreme Court of the United States seems to have departed from this doctrine when it decided the case of *Biddle v. Perovich* (274 U.S. 480; 71 L. ed. 1161). In that case, the defendant was convicted of murder in the first degree and sentenced to be hanged. President Taft commuted the sentence to life imprisonment and ordered the defendant to be transferred to another penitentiary. Subsequently the prisoner applied for a writ of habeas corpus on the ground that his removal from jail to a penitentiary and the order of the President were without his consent and without legal authority. The Supreme Court in denying the petition held that the consent of a convict is not necessary to the commutation of his sentence of death to imprisonment for life. And that a pardon, when granted is the determination by the ultimate authority that the public welfare will be better served by inflicting less punishment than the judgment fixed.

Furthermore, the *Biddle* case is notable in that it expressly declares that the principle laid down in the

previous case of *Burdick v. U.S.* (236 U.S. 79; 59 L. ed. 476), does not apply in the determination of the case. In the *Burdick* case the plaintiff in error was declared by the lower court guilty of contempt for refusal to answer self-criminating questions in spite of the fact that the President of the United States had previously granted him a full and absolute pardon for whatever charges that may arise from his testimony. Upon appeal, the United States Supreme Court held that the appellant not having accepted the pardon, said pardon had no effect, and, therefore, he could not be held guilty of contempt in refusing to answer the self-criminating questions.

While it is true that commutation of sentence and not absolute pardon was involved in the *Biddle* case, it is believed that the principle there enunciated applies with equal force to absolute pardons. The reason why a conditional pardon should first be accepted is because the condition or conditions imposed on the prisoner may be more onerous to him. But the same is not true in case of commutation of sentence. In case of commutation the penalty is always made lighter and never more onerous. There is substitution of a lighter penalty for a heavier one. And in the case of an absolute pardon there is no question that the penalty is totally extinguished in which case it is never possible to impose burdensome conditions on the prisoner. It is apparent, therefore, that the reason for requiring acceptance in the case of a conditional pardon is not present in both commutation of sentence and absolute pardon.

The *Biddle* case seems to have taken the interest of the public as the motivating force in the grant-

ing of clemency to prisoners. While before, the purpose was to grant a personal benefit to the convict in order to correct judicial errors when evidenced by facts subsequent to the sentence or so to proceed that laws shall be equal and just by taking into account certain facts of which the legislator has been unmindful or which have not been given due weight in framing the criminal law (*Guevara, Philippine Criminal Science*, p. 197), the purpose has now taken a different aspect—one which encompasses a greater interest than that of the individual. The underlying motive having been changed, the rule must likewise be

changed. The reasons of the grantee, whatever they may be, in refusing to accept the pardon must be disregarded and give way to the greater consideration of public interest. Thus, even in an earlier case our own Supreme Court intimated a conclusion similar to the one now made: "It is not altogether apparent that in the exercise of his constitutional power to remit or decrease sentences by granting pardons, committed to him by the Constitution, the President of the United States is not free to act without the concurrence of the condemned." (*Cabantag v. Wolfe, supra.*)

WORK AND WORRY

"IT IS NOT work that kills men; it is worry. Work is healthy; you could hardly put more upon a man than he can bear. Worry is rust upon the blade. It is not the revolution that destroys the machinery, but the friction."
—HENRY WARD BEECHER.