

## *Notes and Comments*

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### **Double Jeopardy as a Limitation to the Right of Appeal by the People in Criminal Cases**

**I**N a criminal prosecution the contest is between the malefactor and the social power. There are always two opposing interests, that of society, which demands that the crime be punished, and that of the accused, who has an absolute right to his defense. (U. S. v. Samio, 3 Phil. 691) It seems, however, that the prosecution and the accused go to trial on unequal terms. The latter goes to court presumed an innocent man. His guilt must be shown beyond reasonable doubt. He may establish his innocence by any legitimate fact or circumstance which would meet or tend to meet the State's case and break the force of criminative facts introduced against him. (Pace v. State [1911] Court of Criminal Appeals of Texas, 53 SW 3 Fa; People v. Toledo and Holgado, 51 Phil. 825) His neglect or refusal to be a witness shall not in any manner prejudice or be used against him. (Rule 111, Rules of Court, Sec. 1[c]) Thus, our system of criminal procedure is based on the theory that the accused faces the indictment with all

the constitutional privileges and immunities "which lie at the base of all our civil and political institutions."

It should be noted that the right of appeal is purely statutory. (U.S. v. Gomez, 31 Phil. 218, citing McKane v. Ourston, 153 U. S. 684; Reetz v. Michigan, 188 U. S. 505, 508) The People can appeal only to the extent provided by law and it cannot disregard the constitutional rights of the accused particularly the right against double jeopardy. Of course the latter may waive such right by himself initiating the appeal. (Trono v. U. S., 199 U. S. 521; 11 Phil. 727)

The prohibition against double jeopardy is a constitutional injunction. The Constitution provides that "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." (Section 1[20], Art. III). This provision, particularly the first

part, was first introduced into our law by the instructions of President McKinley on April 7, 1900 to the Second Philippine Commission, then re-enacted in the Philippine Bill of July 1, 1902, and subsequently reproduced in the Philippine Autonomy Act of August 29, 1916. It is almost a verbatim copy of that contained in the Fifth Amendment to the American Constitution, variations in phraseology having been avoided, because as revealed in the report of the Committee on Bill of Rights to the Constitutional Convention "the principles must remain couched in a language expressive of their historical background, nature, extent and limitations as construed and interpreted by the great statesmen and jurists who have vitalized them." (Report of the Committee on Bill of Rights, Constitutional Convention)

The Rules of Court, setting out the procedural aspect of the law, provides for appeal by the People in criminal prosecutions and establishes the conditions when jeopardy attaches. The particular provisions are:

*Sec. 2. Who May Appeal:* The People of the Philippines cannot appeal if the defendant would be placed thereby in double jeopardy. In all other cases either party may appeal from a final judgment or ruling or from an order made after judgment affecting the substantial rights of the appellant. (Rule 118)

*Sec. 9. Former Conviction or Acquittal or Former Jeopardy:* When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the

defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information. (Rule 113)

Section 9 above quoted is a new provision and is in lieu of Sections 26, 27 and 28 of General Orders No. 58. (See II Moran, 501-502) Under the latter law jeopardy attaches only when the following conditions are present: (1) a valid complaint or information; (2) before a competent court; (3) accused having been arraigned; and (4) he has pleaded to the complaint or information. (People v. Ylagan, 58 Phil. 851) The requirement that investigation of the charge shall have actually commenced by the calling of a witness, laid down in U. S. v. Ballantine, 4 Phil. 672, has been dispensed with. (See also People v. Soo Poo Kwat, SC. GR No. 30131, October 15, 1929) The plea of double jeopardy, under this section, can be invoked by the accused in the following cases: (1) previous acquittal; or (2) conviction of the same offense; or (3) when the case has been dismissed or otherwise terminated without his express consent.

In the case of Kepner v. United

States, 195 U. S. 100, the United States Supreme Court gave to the jeopardy clause of the Philippine Bill the accepted meaning that it has under the common law. It said that "at common law protection from second jeopardy for the same offense clearly included immunity from second prosecution where the court having jurisdiction had acquitted the accused of the offense; and it is the settled law of this court that former jeopardy includes one who has been acquitted by a verdict duly rendered, although no judgment be entered on the verdict, and it was founded upon a defective indictment. The second jeopardy is not against the peril of second judgment, but against being tried for the same offense." Thus, it is now settled doctrine in our criminal jurisprudence that a judgment of acquittal by the lower court having jurisdiction of the case is final and conclusive and the People cannot appeal therefrom. (U. S. v. Sanges, 144 U. S. 310; U. S. v. Ball, 163 U. S. 62, cited in the Kepner case; U. S. v. Mendezona, 11 Phil. 726, 195 U. S. 197)

The decision in the Kepner case was rendered by a closely divided court. The following salient points may be gathered from the dissenting opinions of Justices Holmes, White, McKenna and Brown:

Firstly, That a man cannot be said to be more than once in jeopardy for the same cause however often he may be tried. The jeopardy is one continuing jeopardy from its beginning to the end of the

cause and what the principle forbids is a trial in a new and independent case where a man already had been tried once. (U. S. v. Perez, 9 Wheat. 579; Simmons v. United States, 142 U. S. 148; Logan v. United States, 155 U. S. 271; State v. Lee 65, Connecticut 265) He would no more be put in jeopardy a second time when retried because of a mistake of law in his favor than he would be when retried for a mistake that did him harm. It cannot matter that the prisoner procured the second trial.

Secondly, That the common law doctrine is incompatible with our judicial system. This doctrine was justified by the jury trial which is peculiar to the American judicial system. On the other hand, in this jurisdiction the accused is tried by only one man, the presiding judge. Justice Brown said: "It seems to me impossible to suppose that Congress intended to place in the hands of a single judge the great and dangerous power of finally acquitting the most notorious criminals." (Kepner v. United States, *supra*, page 706)

Thirdly, That the jeopardy clause of the Philippine Bill should be construed in a sense as it had theretofore been understood in the Philippines. Under the Spanish system of criminal procedure, jeopardy did not attach until after the Audiencia or the Supreme Court had acted upon the case on appeal of either side. (See U.S. v. Samio, *supra*) This was evidently the view embodied in General Orders No. 58 and Act No. 194 of the

### Philippine Commission.

While it is now settled that the judgment of acquittal is unappealable (*People v. Daylo*, 54 Phil. 924; *People v. Orfida* VIII L. J. No. 6) a contrary view will not really constitute a "seismic innovation" in our judicial system. The principle that no one would be twice put in jeopardy for the same offense is an ancient and well established law of reason, justice and conscience. It is embodied in the maxim of the civil law *non vis in idem*, in the common law of England, and doubtless in every system of jurisprudence and instead of having specific origin, it simply always existed. (16 C. J. 244; *Stout v. State*, 36 Okl. 744, 756, 13 Pac. 533, 11 Moran, *supra*) But as understood under the civil law system of trial by judges, double jeopardy partakes of a different connotation. Justice Cardozo in the case of *Palko v. State of Connecticut*, 302 U. S. 319, referring to the decision in the *Kepner* case said: "The view was there expressed for the majority of the court that the prohibition was not confined to jeopardy in a new and independent case. It forbade jeo-

pardy in the same case if the new trial was at the instance of the government and not upon the defendant's motion. (Cf. *Trono v. U. S.* 199 U. S. 521, 26 S. Ct. 121, 50 L. Ed. 292, 4 Ann. Cas. 773) All this may be assumed for the purpose of the case at hand though the dissenting opinions (*Kepner v. United States*, *supra*) show how much was to be said in favor of a different ruling." (*Palko v. Connecticut*, *supra*, pp. 322-323). The proposal, therefore, of Senator Vicente J. Francisco to amend our Constitution so as to allow the People to prosecute an appeal from a judgment acquitting an accused person seems to us not only based on sound reason but as well justified by our experience. (R. No. 3 Joint Resolution Proposing an Amendment to the Bill of Rights of the Constitution of the Philippines in order to allow an appeal by the State from a judgment of acquittal in criminal cases—Art. III, Section 1 subsection 20: "An appeal by the State from a judgment of acquittal in criminal cases shall not constitute double jeopardy.")

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