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[G.R. No. 571. October 11, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLANT, VS. THOMAS E. KEPNER, DEFENDANT AND APPELLEE.

D E C I S I O N

SMITH, J.:

The defendant in this case was brought to trial in the Court of First Instance of Manila on the charge of *estafa*, and after a full hearing of the case he was acquitted. From the judgment of acquittal the prosecuting attorney took an appeal to this court by virtue of the provisions of General Orders, No. 58, sections 43, 44, *et seq.*, and the defendant now asks that the appeal so taken be dismissed on the ground that the Government is "not entitled to an appeal from a finding of not guilty and a judgment of acquittal in a criminal case." A similar motion heretofore made by counsel for the accused was denied by this court. The renewal of the motion is based on the theory that that portion of the "Philippine Bill" recently passed by Congress which secures a defendant against more than one jeopardy of punishment for the same offense ought to receive the same construction given like provisions in the Constitution of the United States and the constitutions of various States of the Union, and that therefore the previous ruling should now be reversed.

The court is still of the opinion that no jeopardy attaches to the defendant until the judgment for or against him has become final, and that the act of Congress temporarily providing for the administration of affairs in the Philippines affords no ground for any change in the ruling made on the first motion. Now, as then, the question is, Has the defendant been placed once in jeopardy by his trial and acquittal in the lower court? If he has, then he can not again be tried on the same charge, and the appeal ought not to be entertained, as no result could follow its determination. If he has not, then the appeal must be heard and determined in conformity with the law of procedure now in force in these Islands.

All civilized peoples are substantially agreed that when a person accused of crime has been once finally convicted or acquitted of the charge against him he ought not to be vexed again by a prosecution for the same offense. The plea of once in jeopardy is the *res adjudicata* of the criminal case.

But just when the right to the plea accrues, just when a defendant may call it to his protection and avail himself of it as a shield against further prosecution on the same charge has presented, particularly to some American courts, difficulties which, by the way, do not arise from any perplexities inherent in the plea itself, but rather from a more or less rigid adherence to a long line of precedents which nobody seems willing to disturb but which nearly all admit have now but little if any sound reason to support them.

Formerly, in England, the right to plead jeopardy after an acquittal or conviction was the necessary adjunct, the indispensable auxiliary of the trial by jury, inasmuch as the right of trial by his peers, reluctantly conceded as a remedy for judicial abuses, would have availed th£ citizen but little if the verdict of the twelve men, good and true, had been left to the mercy of a pliant judiciary who were the mere creatures of the authority or influence which made them.

Hence, no appeal was permitted from the verdict of the jury or from the judgment entered in conformity with it. Both were final, and therefore the jeopardy became complete, not because there had been a conviction or an acquittal but because the question of innocence or guilt, of punishment or no punishment, had been finally determined beyond all possibility of judicial change or alteration. From the fact, however, that the verdict of the jury marked the final and definite determination of the proceeding, it came to be regarded as the test of whether or not there was a complete jeopardy, and from this in its turn arose the correlative principle that once the trial had been begun before a competent court and jury, upon a valid indictment, no step backward being possible, any discharge of the jury not resulting by consent of the prisoner or from a cause beyond the control of the court, perfected tt jeopardy of the accused which he might plead in any subsequent prosecution against him on the same charge. This construction, by which the verdict of the jury and not the final determination of the case was made the test of an accrued jeopardy, could affect no rights in England, either of the State or of the accused, inasmuch as the same result had to follow whether one construction or the other was adopted.

In some few States of the Union, however, whose constitutions gave voice to the common-law maxim that no man should be brought in jeopardy twice for the same offense, the

acceptance of the verdict of the jury as the sole test of the accomplished jeopardy resulted in the reading into the constitutional provision the finality of a verdict of acquittal and the enunciation of the consequent doctrine that from a verdict of acquittal there could be no appeal,v even though such a step were expressly authorized by statutory enactment. This, too, although the courts of these very States found it entirely consistent to uphold the right of an accused to appeal from a judgment of conviction and secure a new trial upon the convenient doctrine, lugged in by the ears, that by taking an appeal the defendant waived his right to plead jeopardy. That is to say, he waived his plea—a most substantial right—when he sought by appeal to have an illegal conviction set aside for errors committed against him; but when the State invoked the same remedy to vacate an illegal acquittal secured, let us say, by his successful objection to proper, competent, and material evidence, of his guilt, he waived nothing.

The proposition that a person accused of crime is entitled to have an illegal and improper judgment against him modified, corrected, and set aside and that the State can have no relief against a similar judgment in his favor, has neither sound sense nor sound law to support it. It prevents uniformity in, the administration of justice and strikes at the ultimate purpose of all jurisprudence—a correct judgment, legally obtained. The defendant has no higher right to be protected against an improper conviction than, has the body politic to be secured against an unlawful acquittal and a miscarriage of justice. At first, when judges were the corrupt and willing tools of tyrannical power, there may have been good reason for not permitting an appeal by *either* side from the verdict of twelve men duly selected to try the case, but when the courts became good enough to pass on the validity of a verdict of conviction, it would seem that they might be safely trusted to pass on the legality of a verdict of acquittal. When the reason for the rule ceased, the rule ought to have ceased with it, and at all events it should not be read into the organic law as a limitation on legislative power to provide a proper remedy for the correction of judicial errors and mistakes.

But even if the cases cited by respondent (People vs. Weber, 38 Cal., 467, and 19 111., 342) are correct in construing that the constitutional provision on jeopardy makes the judgment of acquittal final and beyond attack or impeachment, their authority is of little avail in support of the motion unless it can be further shown that Congress adopted the jeopardy clause of the “Philippines Bill,” not in the light of existing insular laws but in the light of a judicial construction applicable at best to jury trials, which have not now, never have had, and are not likely to have in the immediate future any place in the jurisprudence of the Archipelago.

The court is of the opinion that Congress did nothing of the kind. Any other conclusion would lead to the assumption that Congress intended the provision under discussion to be interpreted by precedents not only. far from satisfactory to many of the best jurists of its own country but wholly at variance with the judicial system, procedural law, and established precedents of the people for whose benefit the law was enacted.

Before the change of sovereignty there never was in the Philippine Islands any finality to the judgment .of the trial court in felony cases until it had been ratified and confirmed by the court of last resort. Such a judgment was merely advisory to the appellate tribunal, and might be modified, set aside, or changed, on a review of the record, either to the benefit or the prejudice of the defendant, *with or without an appeal.* Whether the Court of First Instance acquitted the defendant or convicted him, he could not be placed at liberty in the one case or receive the punishment adjudged in the other until the reviewing authority had finally affirmed the judicial determination of the lower court. More than that, if the trial court *acquitted* the accused, the Audiencia (Supreme Court) might convict him, and if he was convicted it might raise or lower his punishment or even acquit him altogether. This was the law of the land when the change of sovereignty took place, and it has only been modified since to the extent of making the judgments of Courts of First Instance in felony cases (except those for capital offenses) final *unless an appeal has been taken either by the Attorney-General or the accused.* So then, so now: Once a criminal cause is before the court, whether on appeal or on review, the judgment may be changed, altered, or reversed as to the appellate tribunal may seem proper. Not being inconsistent with the act of Congress, this law can not be construed to have been repealed by implication, and it must be held to be now in full force for the purposes it was designed to affect.

To be in jeopardy in the legal sense it is. not sufficient that the danger should have begun. It must also have ended before the plea can be made effectual. Jeopardy is not the peril of more than one trial, but the peril of more than one punishment, and in the same proceeding there can be no danger of a second punishment until the first has been *finally* adjudged.

Attention is called to the following decisions of this court and its immediate predecessor: D. Juan Garcia *vs.* D. Cesar Lopez Gascon, Criminal Branch Supreme Court of Justice, P. I., September 12, 1900; United States *vs.* D. Mateo Perez, Supreme Court, P. I., April 9, 1902.

For the foregoing reasons the court is of the opinion that respondent’s motion to dismiss the appeal taken by the Government must be denied, and it is so ordered, with costs against the moving party.

Arellano, C. J., Torres, Cooper, Willard, Ladd, and *Mapa, JJ.,* concur.

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