

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. YAM TUNG WAY, ALIAS NAM SING, DEFENDANT AND APPELLEE.*G.R. No. 6317. December 18, 1911*

Ponente: CARSON, J.

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The defendant in this case was charged in the Court of First Instance of Manila with the crime of defraudacion de propiedad literaria (fraud or infringement of literary rights or property) as defined and penalized in article 539 of the Penal Code. The information charges substantially that the defendant, with intent to defraud, and to the prejudice of the complaining witness, the owner of a certain literary work, a "Reduction Table," feloniously, fraudulently and without authority copied, printed and reproduced this "Reduction Table" and sold and distributed fraudulent copies thereof to the damage and prejudice of the complaining witness in the sum of P3,000.

Defendant was duly arraigned and pleaded not guilty in one of the divisions of the Court of First Instance of Manila, and after certain further proceedings which it is not necessary to set out at this time, the case was transferred to the division of that court presided over by the Hon. A. S. Crossfield, before whom it was tried.

The prosecution presented a number of witnesses whose testimony tended to support the truth of the allegations of the information touching the unauthorized reproduction and sale by the defendant of the pamphlet or booklet, containing tables of comparative values of weights and measures in the metric system and the system of weights and measures commonly known as the English system, which is referred to in the following certificate, signed and sealed by the chief of the division of archives, patents, copyrights and trade-marks, and dated May 10, 1909.

"This is to certify that by the records of the division of archives, patents, copyrights and trade-marks, it appears that Manuel Castell, of the city of Manila, Philippine Islands, did, on the eighth day of May, nineteen hundred and nine, deposit in said division for registration a book entitled 'Tabla de Reduccion,' and the date of the receipt thereof was duly noted and recorded; and protection thereof will remain in force from said date in accordance with the Spanish Law of Jan. 10, 1879, royal decrees of Sept. 3, 1880, and May 5, 1887."

Thereafter the Government closed its case and the defendant moved for a dismissal on the ground that the evidence submitted on behalf of the Government did not establish the commission of the offense charged in the information, or of any offense defined and penalized by law. Judgment on this motion was reserved by the court at the request of counsel for both parties, who desired to submit briefs on the legal questions raised by the motion. Pending judgment on the motion, defendant submitted his evidence. Subsequently, upon consideration of the motion to dismiss submitted after the Government closed its case, and as to which judgment had been reserved, the court below sustained the motion and discharged the defendant.

The trial court based its judgment dismissing the information and discharging the defendant on the ground that no copyright law exists in the Philippine Islands and that the complaining witness could have no exclusive rights in the pamphlet in question which were subject to violation or infringement, so as to sustain a conviction under article 539 of the Penal Code. No finding was made as to the alleged facts touching the reproduction by the

defendant of the pamphlet of which ownership is claimed by the complaining witness.

The case has been brought here by the Government in an attempt to appeal from the judgment of the court below. We are asked to reverse that judgment and grant a new trial, on the ground that the trial judge erred in declaring that no copyright law is in force in these Islands. But without going into the question of the correctness of the conclusions of law upon which the trial judge based his action, we are all agreed that the government had no right of appeal from the judgment entered by the court below dismissing the information and discharging the defendant.

The allowance of an appeal by the Government would undoubtedly place the defendant twice in jeopardy in violation of the provisions of the Philippine Bill of Rights, set out in the Act of Congress of July 1, 1902, as those provisions have been construed by the Supreme Court of the United States in the case of *Kepner vs. United States* (195 U. S., 100; 11 Phil. Rep., 669).

Defendant was regularly arraigned, pleaded not guilty, put upon his trial by the calling of the government's witnesses against him, and thereafter discharged by the trial court. It is true that the court made no express finding as to whether the defendant did or did not commit the specific acts set out in the information, and that the dismissal of the information was based on the court's conclusion of law that there being no copyright law in force in these Islands, the acts which it is alleged were committed by the defendant do not constitute the crime with which he was charged, nor any other offense defined and penalized by law. But the reasoning and authority of the opinion of the Supreme Court of the United States in the case of *Kepner vs. United States*, supra, is conclusively against the right of appeal by the government from a judgment discharging the defendant in a criminal case after he has been brought to trial, whether defendant was acquitted on the merits or whether defendant's discharge was based upon the trial court's conclusion of law that the trial had failed for some reason to establish the guilt of the defendant as charged.

As indicated in the opinion in that case, the protection afforded by the prohibition against the putting of any person twice in jeopardy for the same offense, is a protection not merely against the peril of second punishment, but against being tried a second time for the same offense. In that case the court expressly held that:

"It follows that Military Order No. 58, as amended by Act of the Philippine Commission, No. 194, in so far as it undertakes to permit an appeal by the Government after acquittal, was repealed by the Act of Congress of July, 1902, providing immunity from second jeopardy for the same criminal offense."

But the reasoning of the opinion goes further and denies the right to the Government to procure the reversal of erroneous proceedings and commence anew, save only in those cases in which the first proceeding did not create legal jeopardy. So that, without his own consent, a defendant who has once been brought to trial in a court of competent jurisdiction cannot be again put on trial for the same offense after the first trial has terminated by a judgment directing his discharge, whether his discharge be the result of a formal acquittal, or of a ruling of the court upon some question of law arising at the trial.

This court has frequently held that legal jeopardy attaches in criminal proceedings in this jurisdiction after arraignment and plea in a court of competent jurisdiction, at the moment when the first witness is called to the stand and interrogated, and it is quite clear that the defendant in this case having been brought to trial after arraignment and plea and all the government's witnesses having testified on his trial, is entitled to protection against the peril of being again brought to trial for the offense with which he was charged at that trial and this whether the rulings of the trial judge on which he based his order discharging the defendant and dismissing the information were or were not erroneous. (*U. S. vs. Ballentine*, 4 Phil. Rep., 672; *U. S. vs. Montiel*, 7 Phil. Rep., 272; *U. S. vs. Gemora*, 8 Phil. Rep., 19.)

What is said in the following citation from the decision of the Supreme Court in the case of *Kepner vs. U. S.*,

supra, and the observations of Mr. Bishop therein quoted, have a proper place in this opinion as bearing directly on the precise point under consideration.

"We are not here dealing with those statutes which give to the Government a right of review upon the steps merely preliminary to a trial and before the accused is legally put in jeopardy, as where a discharge is had upon motion to quash or a demurrer to the indictment is sustained before jeopardy has attached. Such statutes have been quite generally sustained in jurisdictions which deny the right of second trial where a competent court has convicted or acquitted the accused. (People vs. Webb, 38 Cal., 467.) Mr. Bishop, in his work upon Criminal Law, sums up the scope and authority of such statutes as follows:

" 'A legislative provision for the rehearing of criminal causes can not be interpreted - or, at least, it can not have force - to violate the constitutional rule under consideration, whatever be the words in which the provision is expressed. When, therefore, a defendant has been once in jeopardy, the jeopardy can not be repeated without his consent, whatever statute may exist on the subject. Such a statute will be interpreted with the Constitution, and be held to apply only to cases where it constitutionally may. And if it undertakes to give to the State the right of appeal, to retry the party charged, after acquittal, it is invalid. And so the writ of error, or the like, allowed to the State, can authorize the State to procure the reversal of erroneous proceedings and commence anew, only in those cases in which the first proceeding did not create legal jeopardy.' (1 Bishop Criminal Law (5th Ed.), section 1026.)"

The appeal entered in this case on behalf of the Government should be dismissed with costs against the appellant. So ordered.

Torres, Mapa, Johnson, Moreland, and Trent, JJ., concur.

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