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Constitutional Privileges in the Philippine Islands

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NOTE AND COMMENT

CONSTITUTIONAL PRIVILEGES IN THE PHILIPPINE ISLANDS.—About a year ago an appeal was decided in the Supreme Court of the United States which came up from the Supreme Court of the Philippine Islands, involving the question of the right of the government to appeal in a criminal case and to secure a conviction after an acquittal below. That case was *Kepner v. United States*, 195 U. S. 100. The court held, by a vote of five to four, that proceedings in error instituted by the government after an acquittal in the trial court, had the effect of placing the accused twice in jeopardy for the same offence, and were therefore unlawful, under the Act of Congress which provided a Bill of Rights for the Philippine Islands.

Another and a closely analogous question, touching the rights of persons accused of crime in those islands, has recently been passed upon by the United States Supreme Court. *Trono v. United States*, 26 Sup. Ct. Rep. 121. Trono and two others were charged with murder in the first degree. They were acquitted of that crime but were convicted of the crime of assault, a lesser crime embraced within the crime with which they were charged. They appealed to the Supreme Court of the Islands, and that court reversed the trial court and found them guilty of murder in the second degree, which is a crime

embraced within the one originally charged, but of a higher degree than that of which they were found guilty. It was contended by the accused that this action was in violation of the Act of Congress which prohibited the government from placing a person twice in jeopardy. So far as concerns the power of the Supreme Court of the Islands to itself convict the accused on appeal, such is the ordinary and valid procedure of the courts of that country. The case turned on the question of twice in jeopardy.

The United States Supreme Court held that the case was exactly parallel to one arising in one of the federal courts of this country, where, upon an indictment for a greater offense, and after the accused had been found guilty only of a lesser offense embraced within it, it was sought, after a new trial had been granted at the instance of the accused, to re-try him for the crime originally charged. The court conceded a difference in authority upon this question. Some cases held, it was admitted, that a new trial carried with it the right to be tried for no greater crime than that for which there had been a prior *conviction*. But the majority of the court were not impressed with the correctness of this view. The ground upon which new trials are awarded is that, by asking for a correction of errors made in the first trial, the accused waives the constitutional protection accorded him, and himself asks for a new trial notwithstanding that it places him twice in jeopardy. Those courts which limit the new trial to the crime as to which there was a prior conviction, hold that the accused limits this waiver to his needs, and that his request for a reversal applies only to so much of the judgment as convicted him of guilt; but he is not supposed to ask reversal of so much of it as acquitted him of offense.

In opposition to this view the court held that "it seems much more rational and in better accord with the proper administration of the criminal law to hold that, by appealing, the accused waives the right to thereafter plead once in jeopardy, when he has obtained a reversal of the judgment, even as to that part of it which acquitted him of the higher while convicting him of the lower offense. When, at his own request, he has obtained a new trial, he must take the burden with the benefit, and go back for a new trial on the whole case."

MR. JUSTICE MCKENNA, with whom concurred MR. JUSTICE WHITE and the CHIEF JUSTICE, takes the contrary view, and cites in the margin cases from seventeen American jurisdictions supporting him, and which he contends represent the clear and overwhelming weight of authority.

It is clear from this case, that the rights of appealing defendants in criminal cases, while they are strictly construed, are the same in the Philippine Islands as in the domestic territory of the United States. E. R. S.