DOUBLE JEOPARDY UNDER THE ARTICLES OF WAR

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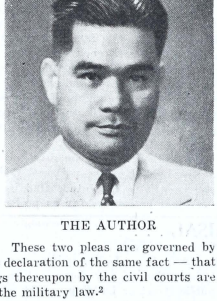

THE AUTHOR

One of the most controversial matters in the administration of military justice today is the plea of double jeopardy under Article 44 (a) of the Uniform Code of Military Justice (U.S.A.) and AW 39, PA, viz: — "No person shall, without his consent, be tried a second time for the same offense."[1]

As a general rule, in the criminal procedure the accused invokes the principle of jeopardy by means of one of the two pleas of former acquittal (*autrefois acquit*), or former conviction (*autrefois convict*), according as he has been acquitted or convicted at the former trial. These two pleas are governed by the same rules and each is but the declaration of the same fact — that a trial has been had. The rulings thereupon by the civil courts are applicable to similar cases under the military law.[2]

It is an ancient maxim of the common law and of the civil law that no man shall be "put twice in jeopardy" for the same offense. The significance of this clause is so important that it has been since incorporated not only in the constitution of the United States but also in the Constitution of the Philippines.[3]

The prohibition on double jeopardy contained in the Fifth Amendment to the Constitution of the United States has, however, provoked conflicting issues brought about by unusual circumstances arising mostly from the exigencies of World War II. The leading case on the matter is the recent case of *Wade v. Hunter*,[4] which has elicited considerable attention among jurists and legal writers.

In the *Hunter case*, petitioner, an American soldier, was charged with rape alleged to have been committed in Germany. He was placed on trial by a general court-martial. After hearing evidence and arguments of counsel, the court-martial closed to consider the case. Later that day, however, the court reopened and granted a continuance to enable the prosecution to present additional witnesses, then absent due to illness. Before the trial could be resumed, the 76th Infantry Division to which petitioner was attached moved to a distant town. The case was then withdrawn from the original court-martial and referred for trial to a court-martial convened by the Commanding General of the Third Army. The trial was not, however, concluded due to the tactical situation of the Third Army and the distance to the assistance of witnesses, in which case the trial could not be completed within a reasonable time. Accordingly, the Commanding General of the Third Army transmitted the charges to the Fifteenth Army stating that the action was necessary to carry out the policy of the United States Army in Europe to accelerate prompt trials "in the immediate vicinity of the alleged offenses." Pursuant to this transmittal, a court-martial was convened. Petitioner represented by counsel, filed a plea in bar alleging that he had been put in jeopardy by the first court-martial proceedings and could not be tried again. His plea was overruled, the case was tried, and a conviction followed. On petition for writ of habeas corpus, the Federal District Court ordered his release, holding that his plea of former jeopardy should have been sustained. The court further held that the proceedings of the second court-martial were void as

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1 Article 44 (a) Uniform Code of Military Justcie USA; AW 39, PA.
2 Winthrop's Military Law and Precedents, (2d ed., 1920), p. 259.
3 Fifth Amendment to the U.S. Constitution; Constitution of the Phil, Art. III, Sec. 1, Clause 20.
4 Wade v. Hunter, 69 S. Ct. 834 (1949).

THE NATURAL LAW THEORY AND THE PHILIPPINE SUPREME COURT

By CRISOLITO PASCUAL *

(Continued from the last issue)

2. *Application of Natural Law in the Legal Order.*

In applying the continuing protective postulates of natural law to the Rutter Case, the Supreme Court expressed its position in this way: "Laws altering existing contracts will constitute an impairment of the contract clause of the Constitution only if they are unreasonable and unjustified in the light of the circumstances occasioning their enactment." After examining the satisfactory situation and condition prevailing in the country from 1948 to 1952,[38] the Supreme Court proceeded without hesitation to declare the period provided in Republic Act No. 342 as contrary to the continuing protective postulates of justice fairness, righteousness, and equity. Said the Court:

"This period seems to us unreasonable . . . the relief accorded works injustice to creditors who are practically left at the mercy of the debtors. Their hope to effect collection become extremely remote, more so if the credits are unsecured. And the injustice is more patent when, under the law, the debtor is not even required to pay interest during the operation of the relief . . ."

"In the face of the foregoing observations, and consistent with what we believe to be as the only course dictated by justice, fairness and righteousness, we feel that the only way open to us under the present circumstances is to declare that the continued operation and enforcement of Republic Act No. 342 at the present time is unreasonable and oppressive, and should not be prolonged a minute longer, and, therefore, the same should be declared null and void and without effect. And what we say here with respect to said Act also holds true as regards Executive Order Nos. 25 and 32, perhaps with greater force and reason as to the latter, considering that said Orders contain no limitation whatsoever in point of time as regards the suspension of the enforcement and effectivity of monetary obligations."

3. *Useful Role and Function of Natural Law in the Legal Order.*

The protective postulates of natural law are ever present in all men everywhere. While it may be said different peoples may not have the same ideas about the continuing protective postulates of natural law on the ground that different peoples do not have the same level of intelligence and ethical concepts and hence the same comprehension of their contents and degree of award, the postulates of natural law are nonetheless present in all peoples at all times as the dictates of their moral nature. As such, they are authoritative and paramount to all.[39] Consequently, right reason dictates their recognition and validation in the legal order because obedience to natural law and its continuing protective postulates brings advantage while disregard brings disadvantage. Natural law, therefore, holds an exalted position in the heirarchy of norms. Failure then to heed the

38—Said the Supreme Court on this point: "We do not need to go far to appreciate this situation. We can see it and feel it as we gaze around to observe the wave of reconstruction and rehabilitation that has swept the country since liberation thanks to the aid of America and the innate progressive spirit of our people. This aid and this spirit have worked wonders in so short a time that it can now be safely stated that in the main the financial condition of our country and our people, individually and collectively, has practically returned to normal, notwithstanding occasional reverses caused by local dissidence and the sporadic disturbance of peace and order in our midst. Business, industry and agriculture have picked up and developed at such stride that we can say that we are now well on the road to recovery and progress. This is so not only as far as our observation and knowledge are capable to take note and comprehend but also because of the official pronouncements made by our Chief Executive in public addresses and in several messages he submitted to Congress on the general state of the nation."

To bear this out, the Court quoted at length from the public statements of the President which the Court deemed to be most expressive and representative of the general situation. The Court quoted from the "State of the Nation" message to the Joint Session of Congress of January 24, 1949 (45 O.G. Jan. '49) and from the address given on the occasion of the celebration of the sixth anniversary of the Independence of the Philippines, July 4, 1952 (48 O.G. 3287-3289).

39—Declaration of Human Right approval on December 10, 1948 by the United lization illustrates this point rather well.

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constituting double jeopardy since no "urgent necessity" existed for the removal of the case from the first court-martial.[5]

In interpreting the Fifth Amendment, federal courts have held that jeopardy attaches when any evidence has been heard in either a jury[6] or non-jury[7] trial. Despite this attachment of jeopardy, however, a second trial is not barred if an urgent necessity caused the stopping of the first trial before conviction or acquittal.[8] For that reason, a court considering a plea of double jeopardy must weigh the alleged necessity against the dangers that approval of such an exception to the general rule may result in loss of the fresh evidence available in a prompt prosecution, or in repeated harassment of the accused in the endeavor to assure conviction.[9] The necessity has been found to override these considerations in the following situations: (1) when the term of court ends before a decision is reached; (2) when the jury is unable to agree within a reasonable time; (3) when a biased judgment is feared; and (4) when persons essential to the proper completion of the trial are excusably absent.[10]

In the *Hunter case*, the question that arises is whether the Constitution of the United States protects a member of the armed forces against double jeopardy. It has been argued that only such statutory safeguards as Congress enacts may control the conduct of military tribunals, and that the governing provision is AW 40, USA (now Article 44-a) which makes a plea of double jeopardy available only where a finding was previously reached.[11] However, the fact that military personnel are expressly excepted from the application of a separate provision of the Fifth Amendment, implying their inclusion under its other protection, and the fact that there is no equivalent of AW 40 in legislation for the naval forces indicate the applicability of the double jeopardy clause upon courts-martial.[12] And yet the Supreme Court of the United States in the final determination of the *Hunter case* said that "the interpretation and application of the Fifth Amendment's double jeopardy provision have been considered chiefly in civil rather than military court proceedings."[13] The U.S. Supreme Court is further of the opinion that justice requires that a particular trial may be discontinued when particular circumstances manifest a necessity for so doing, and when failure to discontinue would defeat the ends of justice.[14] From this opinion Mr. Justice Murphy, with whom Mr. Justice Douglas and Mr. Justice Rutledge joined, dissented. Said Mr. Justice Murphy:

> "I agree with the court below that in the military courts, as in the civil, jeopardy within the meaning of the Fifth Amendment attaches when the court begins the hearing of evidence. x x x
>
> "There is no doubt that Wade was placed in jeopardy by his first trial. The Court now holds that the decision of his commanding officer, assessing the tactical military situation, is sufficient to deprive him of his right under the Constitution to be free from being twice subjected to trial for the same offense. x x x
>
> "The harassment to the defendant from being repeatedly tried is not less because the Army is advancing. The guarantee of the Constitution against double jeopardy is not to be eroded away by a tide of plausible-appearing exceptions. The command of the Fifth Amendment does not allow temporizing with the basic rights it declares. Adaptions of military justice to the exigencies of tactical situations is the prerogative of the commander in the field, but the price of such expediency is compliance with the Constitution."[15]

Doubtless, different holdings exist due to different phrasing of the constitutional prohibition against placing a person twice in jeopardy for the same offense. Ignoring these holdings, however, great uncertainty exists as to (1) the stage of the proceedings at which jeopardy attaches; (2) the rules to determine the identity of the offenses; (3) the grade of offense for which a defendant may be tried when a new trial has been granted at his request.[16]

5 Id., 72 F. Supp 755 (D. Kansas, 1947).
6 US v. Kraut, 2 F Supp 16 (S.D.N.Y.) (1932).
7 Clawans v. Rives, 104, F. 2d 240 (App. DC 1939).
8 48 Columbia Law Rev. 299 (1948).
9 Id.
10 Id. at 300
11 Id.
12 Id.; Courts-Martial and the Constitution, 33 Marquette L. Rev. 15 (1949).
13 Wade v. Hunter, 69 S. Ct. 834, 837 (1949).
14 Id.
15 Id. at 840
16 3 The Am-Law Institute Proceedings 470 (1925)

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summons and constrain of the continuing protective postulates of natural law is a derogation or perversion of natural law and the legal order. Accordingly, positive law should conform to the postulates of natural law in order to be valid and binding. The great authority of Cicero is focused on this point. For him, natural law has definitely this useful function. "It is not allowable," posited Cicero; "to alter this law nor deviate from it, nor can it be abrogated. Nor can we be released from this law either by the Senate or by the people."[40]

Thus, any provision of positive law that is at variance with or in derogation of the postulates of natural law is not a law but an invalidation or corruption of the law. In other words, natural law can be employed as a juristic basis or criterion for testing the validity of positive law. An enactment of the legislature of a State is not therefore valid if and when it deflects from the continuing protective postulates of natural law. The view advanced by some writers that a law passed with constitutional authority or a law passed in accordance with the provisions of the Constitution remains valid even though it violates the continuing protective postulates of natural law is rather incorrect and fraught with danger.

There are at least two reasons why this is so. In the first place, no positive or human law could flagrantly violate the summons and constrain of natural and its continuing protective postulates without producing or arousing a decidedly adverse reaction from the members of the community themselves. It is unthinkable that the people would have "yielded power" to the legislators to make or pass such kind of laws. There are many provisions of Philippine positive law itself, some of which are given here, that support this ground. Article 10 of the Civil Code of the Philippines provides for the presumption that the lawmaking body itself intended right and justice to prevail whenever it acts. Article 19 of the same code provides that in the exercise of one's rights or in the performance of one's obligation every person must act with justice, honesty, and good faith and give everyone his just due. Article 1379 of the same code appeals to the principles contained in sections 58 to 67 of Rule 123 of the Rules of Court in the Philippines in the construction and interpretation of contracts, where it is provided that construction and interpretation in favor of natural rights is to be adopted. Thus, pursuing this point further with a concrete illustration, in a sale of real property to two different vendees, although a preference is expressed or created by law for the title of ownership first recorded, this positive rule must be understood to be based on natural good faith as it is inconceivable that the people would have yielded authority to their lawmakers to do away with good faith and sanction bad faith by requiring compliance only with the formality of registration.[41]

The second reason is as significant and imperative as the first one, if not more so. The members of a community may have, in a solemn compact, secured for themselves and their posterity a regime of justice, liberty, equality, and democracy. In such a situation there is no question that there is a clear and present, not a doubted and remote, appeal to natural law itself.[42] It is a solemn pronouncement or declaration of the volksgeist or diwa. Indeed, it is an articulation of the soul and spirit of the people making a direct appeal to natural law for such concepts as justice, liberty, equality, and democracy or

40—Republica, Book III, chap. xxii. Keyes translation. G. P. Putman's Sons New York.

41—See Section 50, Act No. 496, as amended. See also Government of the Philippines vs. Abuel et al., 45 O.G. 2405.

42—The Preamble of the Constitution of the Philippines provides: "We the Filipino people, imploring the aid of Divine Providence, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty and democracy, do ordain and promulgate this constitution." It may be said that the Preamble, strictly speaking, is not part of the Constitution. But it serves, nevertheless, three very important end. Professors Tanada and Fernando in their Constitution of the Philippines, 4th Ed., Vol. I, p. 33, give the first two: 1) it indicates that the people is the source of the Constitution and form which it derives its claim to obedience, and 2) it sets forth the ends that the Constitution and the Government established by it are intended to promote. The third is that it states unequivocally that the legal ordering to effect the promotion of the avowed ends should always be under a regime of justice, liberty, equality, and democracy. Thus, the Preamble has value for purposes of construction and interpretation and legal ordering. At the least, it is co-equal with the principles enumerated in the Declaration of Principles, Article II of the Constitution.

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Some states hold that the accused is twice put in jeopardy when the jury was impaneled and sworn, and, consequently, if the jury fails to agree, even if it appears that there is no reasonable expectation that they ever can agree, the accused cannot, on the discharge of the jury be again placed on trial. However, other courts allow a second trial in such cases.[17]

On the constitutional prohibition against double jeopardy for the same offense, much diversity of decision exists in regard to the identity of offenses.

> "Different legal tests are employed in different states to determine whether the 'offense' for which the accused is being tried is the 'same offense' as that for which he has already been tried. In some cases two different tests, bringing the same results, are applied in the same state in different cases. There are all sorts of variants of the question. A simple illustration is the case where one by the same act injures or kills two or more persons. Having been acquitted or convicted of assault or murder of one of these persons, can he be tried for assault or murder of the other? This question is answered in the negative in some states and in the affirmative in others."[18]

As to the grade of offense, in some states, if a new trial is granted an accused, he cannot, on the second trial, be prosecuted for higher degree or grade of the offense than that of which he was convicted on the first trial. Thus, if an accused has been indicted for murder, convicted of manslaughter and appeals, he cannot, if a new trial is granted, be tried again for murder, but only for manslaughter. In the Federal Courts and in other states, the contrary rule prevails.[19]

Persuasive arguments abound — that the protection afforded by the Federal Constitution and many of the constitutions of the states reaffirms the old common law pleas of former acquittal and former conviction. But it is now the great weight of authority in the United States that "jeopardy attaches if it attaches at all in a given case, when a trial jury has been impaneled and sworn, although not before. x x x."[20]

Sound opinion dictates that in a plea of double jeopardy, no judgment or sentence is requisite to complete the trial.[21] This was the view of Justice Story,[22] from which the decided weight of modern authority emanated. The traditional military plea of former acquittal (autrefois acquit) is completely inadequate to safeguard the constitutional rights of a soldier or a sailor who has been exposed to successive trials, none of which resulted in judgments. In passing, it is a matter of common knowledge that due to military necessity, the greatly increased possibility of witnesses becoming unavailable, the probability of defense counsel being assigned elsewhere, and the absence of the right to bail operate against the accused in a court-martial concept of jeopardy.[23] In an inconvenient situation such as that, the dignity of the individual and his right to due process should not be subordinated to mere legal technicalities.

The much broader meaning of the phrase "twice in jeopardy," given by the courts today is a product of the practical administration of the law. The modern trend on the subject seems to imply that the doctrine of double jeopardy is "not a rule of law at all, nor can it be enforced by hard and fast rules without, in many cases, working injustices almost as great as that which the doctrine itself was designed to prevent."[24] As can be seen the doctrine is nothing more than a "declaration of an ancient and well-established policy, and that when some overruling consideration of policy intervenes the doctrine is frequently disregarded." Thus, there are cases in which a new trial is allowed although there has already been a justified discharge of the jury; cases permitting a second prosecution after there has already been a conviction or acquittal obtained through fraud; and cases allowing a trial for murder where the injured person dies after his assailant has been prosecuted for assault. These are instances where, notwithstanding the

(*Continued on page* 108)

17 Id.
18 Id.
19 Id.
20 24 Minnesota L. Rev. 522 (1940).
21 Winthrop, p. 260
22 U.S. v. Gibert, 2 Summer 19 (1834).
23 33 Marquette L. Rev. 25 (1949),
24 24 Minn. L. Rev. 522, 561 (1940).
25 Id. at 528

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public weal, are but other terms for the continuing protective postulates of natural law.

Natural law is thus not merely an ideal to which positive law ought to conform without otherwise affecting its legal validity. The everlasting and protective postulates of natural law are genuine and real basis for testing the validity of positive law. This means that it is down. This is the well-known tool of unconstitutionality. A statute can likewise be struck down as null and void when and if it is not only when positive law is unconstitutional that it can be struck against the continuing protective postulates of natural law though there be no constitutional prohibition which it transgresses or to which it is contrary. This is the tool of natural law.

4. *Conclusion.*

It is fortunate that at a time when legal positivism for all its strength is failing man the Philippine Supreme Court has, with confidence and belief and reason, utilized the natural law in the manner it did in the Rutter Case. It has demonstrated quite well that age-old concept of the natural law is capable indeed of a modern content or application. Even the cynical legal realist would find here the realization and validation of the natural law in the legal ordering. As for the Rutter Case itself, the writer takes it as indicative of the renaissance of the natural law in Philippine jurisprudence.

The case of De la Cruz vs. Sosing et al,[43] promulgated by the Supreme Court of the Philippines on November 27, 1953, came to the writer's attention too late for inclusion in the main text. But the Sosing Case is yet another indicium of the present detectable trend in the Court's thinking on natural law. In this case, the Court, with coherence, logic and reason, sacrificed legal positivism to the continuing protective postulates of natural law.

Perhaps the "pure theory of law" attack of Hans Kelsen on the natural lawdoctrine is unwarranted after all. Even in Germany today, German scholars headed by the late great legal philosopher Gustav Radbruch, have recognized the utter helplessness of German jurisprudence in resisting Hitler's demand for the unqualified abandonment of the individual to the German Reich. All because of legal positivism. Radbruch stressed the necessity of recognizing the continuing protective postulates of natural law "in the light of which the arbitrary and inhuman features of Nazi legislation would retroactively be regarded as never possessing the force of law."[44] Professor Heinz Guradze, in his cited work, stated that Radbruch's proposition is by no means of mere theoretical significance. Quoting Radbruch, Guradze said that "Jurisprudence ought to remember the age-old wisdom . . . that there is a natural law under which wrong remains even though it assumes the form of a law."[45]

At present, i.e., from 1947, at least one law school, the College of Law of the University of Notre Dame, has conducted a series of Annual Natural Law Institutes designed to provide a center where the best minds of the world — philosophers, lawyers, judges, jurists, and laymen — can re-examine the history and development of the natural law and its practical application to modern legal orders.[46] Raymond Moley, Professor of Public Law at Columbia University and widely known as one of the Editors of Newsweek Magazine, stated in a book review of the 1950 proceedings of the Natural Law Institute: "I am bold to say that we are witnessing another renaissance in thought, based, as was the former one, on a rediscovery of the past. A nation almost blinded and partially drugged by false philosophy and treacherous politics may yet find its way through the inspiration of Natural Law." How true this is in every politically organized society especially in the intellection of the great social interests, particularly the social interest with reference to the maintenance of human life, personality and dignity.[47] Only through the natural law can the uniqueness of the infinite worth of human life, personality and dignity be asserted. It needs no dialectics to show how legal positivism has

43—G. R. No. L-4875.

44—Radbruch, Vorschule der Dechtsphilosophie, 108 (1947), quoted in Heinz Curadre's The Epistemological Background of Natural Law, 27 Notre Dame, Lawyer, No. 3, 360)1952).

45—Radbruch, Die Erneurung des Rechts, 8 (1947) loc. cit.

46—Our own Carlos P. Romulo read a paper entitled The Natural Law and International Law during the 1949 proceedings of that Institute.

47—This social interest is now expressly recognized in Chapter 2 of the Preliminary Title of the Civil Code of the Philippines.

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LAUGHTER IS LEGAL

A LETTER TO THE TAX COLLECTOR ANONYMOUS

YOU HAVE BEEN TRYING to collect an income tax balance from one R..... R....., late of Winchendon, Massachusetts. This, despite the fact that you have been informed, several times, that the man in question departed from this wicked world on May 11, 1943, leaving no estate to be administered but many sorrowing creditors who wished that he had. Now you send a final notice to this deliquent that you hold a warrant of distraint for the said taxpayer. In these circumstances, the family and friends of the deceased have given this problem a thorough intellectual mastication, after which, they retained me in the name of their departed relative and friend to convey to you the sum total of their collective wisdom and co-operative spirit.

If you should decide to send a U.S. Marshal or other officer to serve the warrant, you will find the taxpayer, his kith and kin avow, comfortably ensconced in a cubicle 7 x 3 x 6 in St. Mary's Cemetery on Glenallen Street in said Winchendon. Your Marshal might first try whistling. If that brings no response, place a pint of Johnny Walker (Black label) within arm's reach of the tombstone. If that doesn't bring him up, then you will surely know that he is deader than a doornail. If your Marshal knows how to commune with the dead, he might be able to coax the fellow to explain his apparent delinquency.

However, if your Marshal is in no hurry — and I never saw one that was — let him bring some sandwiches and a comfortable chair with him and sit himself down with a copy of "Forever Amber" and wait around until Ressurrection Day. On that Day of Days, the man you are looking for will undoubtedly stand up for a ghostly seventh-inning stretch, at which time the warrant can be served.

Another happy thought might be of added consolation to you. If the taxpayer refuses to budge until he hears Gabriel blow his horn, don't let it bother you. For on that day, when the dead shall live again, you will be able to demand, not only the tax due but also you can ask for interest to the Day of Judgment. What you get from this guy alone will be enough to pay off all the national debt accumulated during the past golden decade. If you are a good Democrat — as you should be — that feat alone should entitle you to a great reward in the great Hereafter. There is one possible hitch to this happy thought. You see, my dear Collector, it all depends on whether the man you want is in Heaven or in Hell. If he's in Heaven, you have nothing to worry about — your money is as good as a Victory Bond. But, if by chance he should be in the other place, I'm afraid you're going to have a hell of a time. because some damn-fool lawyer is sure to get hold of him and put him through bankruptcy. Then, you'll be out of luck for fair.

But meantime, do as I suggest. Go down to see him and have a little chat with him. He may tell you where his permanent domicile is, in which case you'll know where you can go if you want your money.

If you should decide to talk to him, will you be good enough to tell him that my charge for writing this letter is $5.00 and that I don't want to go chasing all over Hell for it.

Client (just acquitted on burglary charge) — "Well, goodbye. I'll drop in on you some time."

Counsel — "All right, but make it in the daytime, please."

* * *

"I shall have to give you ten days or $20," said the judge. I'll take the $20, Judge," — said the prisoner.

* * *

"Repeat the words the defendant used," said the lawyer.

"I did rather not. They were not fit words to tell a gentleman."

"Then," said the attorney, "whisper them to the judge." — (2,500 *Jokes For All Occasions*)

* * *

Perfume salesgirl: "You've gotta keep changing. They build you an immunity to them." — *Charles Skiles — King Features*

* * *

The minister to drive home a point about the punishment due to wicked people in hell ended his sermon with the following:

"And there will be quashing of teeth in hell" . . . but an old man stood up, "how about me, I ain't got no teeth."

The minister answered, "Don't you worry, you will be provided with."

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fundamental constitutional guaranty to the contrary, the accused is placed twice in jeopardy for the same offense. *It is, therefore, well recognized that the doctrine of double jeopardy is predicated upon consideration of public policy which policy has become its ultimate and fundamental basis.* (underscoring ours.) For that reason no legal impediment exists to apply to the military establishment the prevailing view that "if the jury, after it has been duly sworn, is discharged before it has rendered a verdict, a second prosecution for the same offense is thereby barred, since to permit it to proceed would be to place the defendant twice in jeopardy."[25]

The rulings discussed above violate the democratic ideals of equal justice under the Constitution, which is the embodiment of all high hopes and aspirations of free men. That Constitution is applicable to all regardless of race, creed, or color, whatever their station in life may be. By that token, there are no such things as one plea of double jeopardy for civilians and another for military personnel. The fact that the military personnel are often exposed to inconvenience insofar as the administration of justice is concerned, means that the broader meaning of double jeopardy should apply to their case. After all, it is the prevailing view in the American courts of justice which the Philippine courts have traditionally followed As it applies to the civilians, there is no reason to deny it to the military personnel.

Said section reads as follows:

"'SEC. 2319. *Letting of municipal ferry, market, or slaughterhouse to highest bidder.*— When any ferry, market, or slaughterhouse belonging to a municipality is to be let to a private party, the same shall, unless otherwise directed by the Department Head, be let to the highest and best bidder for the period of one year or, upon the previous approval of the provincial board, for a longer period not exceeding five years, under such conditions as shall be prescribed by the Department Head.'

"We cannot agree with appellant in her interpretations of the above-quoted section. Said section clearly refers to the letting or leasing of a ferry, market or slaughterhouse in its entirety, to a private party to be operated by the latter. For instance, when a municipality does not wish to operate a slaughterhouse by administration but prefers to have a private party or entity operate the same for a fixed sum, for a period of say one year, under certain conditions, the Council calls for bidders and then makes the ward to the best and most responsible bidder. The same thing is done as regards a municipal market or ferry. But what is meant is the whole ferry, the whole market or the entire slaughterhouse and not any portion or any fractional part of the space therein. When a municipality itself administers a market, then under its authority regulate the use thereof, it may distribute and award spaces therein to be occupied by stores and stalls under conditions and regulations it may impose, but not by public bidding. Otherwise, the with the great number of stalls, numbering hundreds or even thousands, depending upon the size of the market, some stalls or spaces measuring only by a few square feet or square meters, public bidding would entail too much unnecessary proceedings and would result in unnecessary rivalry and competition between numerous parties and also differences in rate and amount of rent paid for the stalls instead of a simple uniform rate based only on the space occupied. It is therefore, clear that on legal grounds the stand taken by the appellant is untenable."[127]

127 Lorenzo et al vs. Mun. Council of Naic, Cavite G. G., 2350-2353.