

In the United States Provisional Court for the
Department of Puerto Rico, at San Juan, A.D.1899.

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: United States :
: vs :
:Bernardo Garcia Ginesta, :Information for counterfeiting.
:Francisco Frances Martinez & :
:Lorenzo Campos Mata. :
:-----:

On the question of jurisdiction.

A protest has been presented to the Department Commander by the District Court of San Juan against the action of the Provisional Court in taking jurisdiction of this cause. As the Judges and the Acting Prosecuting Attorney of the Provisional Court understand said protest it is based upon the fact that the defendants were arrested in May, 1899, before the creation of the Provisional Court, by order of the Judge of the Court of San Francisco in San Juan, since abolished and superseded by the said District Court, and that jurisdiction having lawfully attached in May can not be lost in September. It is also understood that claim is made that these defendants being Spaniards MUST be tried in the District Court, where the proceedings are conducted in the Spanish language and in accordance with the Spanish laws of procedure, because Article XI of the Treaty so provides, even though the defendants request a trial in the Provisional Court.

The principle of law that a Court may be lawfully empowered to try a defendant for a crime committed before the creation of such court is so elementary that no time should be wasted in discussing it. The other principle that a statute creating a new crime can not be retroactive has

evidently been confused with the first principle. That the offence charged against these defendants is an offence against the Statutes of the United States as well as against the local laws of Puerto Rico, see Revised Statutes of U.S., 2nd Edition, 1878, Section 5457; also Act of Jan. 18, 1877, Supplement 1, Chap.24, page 128; also Act of Feb.10, 1891, Supplement 1, page 889.

This being the question it is entirely unnecessary to determine whether Puerto Rico is or is not "a part of the United States" technically. If it is a "part of the United States" the offence is complete without General Order No.88 of this Department under which this Provisional Court was created. If it is not a "part of the United States" technically, then under paragraph II of General Order 88, and under the first clause of Paragraph VIII of General Order 88, the same act committed in Puerto Rico which is punishable by the Federal Courts in the several States if committed there is likewise punishable here by the Provisional Court.

But I do not rely alone upon those portions of General Order 88 above cited. The 4th clause of Paragraph VIII of said Order reads thus: "The criminal jurisdiction of the Provisional Court shall include and be exclusive in the case of offences committed by or against foreigners or by or against citizens of another State, District or Territory of the United States, residing in this Department." That Spaniards who reside in Puerto Rico are "foreigners," see Article IX of the Treaty which provides that Spaniards residing here shall have certain rights therein set forth, but that they must submit themselves to the laws applicable to OTHER foreigners. Therefore it is most earnestly but respectfully insisted that under the 8th Paragraph of General Order 88, which vests the Provisional Court with EXCLUSIVE jurisdiction over this class of cases, the jurisdiction of the District

Court of San Juan or its predecessor over these defendants ceased and the jurisdiction of the Provisional Court attached to said defendants at the very moment of time when General Order 88 became effective.

However, considerations of greater importance arise when we reach the discussion of the Treaty as bearing upon this controversy. The question then partakes of the character of an international responsibility, it being conceded beyond all doubt as I assume, that the Treaty is the paramount law and that if any order of the Department conflicts with the terms of the Treaty, that order is void, but in my mind the conclusion has been firmly reached that General Order No. 88 not only does not conflict with the Treaty but that it harmonizes therewith admirably; and the fact of such concord is a proof to my mind of the great skill and ability shown by the officials of the Army and others who prepared it, particularly when I have knowledge of the innumerable embarrassments to which they were subjected on the part of those persons who were consulted on this matter and who were opposed to the creation of the Court.

It will be observed that in Articles IX and X of the Treaty the word "inhabitants" is used. I quote from Article IX as follows: "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." I quote Article X in full: "The inhabitants of the territories whose sovereignty Spain renounces or cedes shall have assured to them the free exercise of their religion." But when we come to Article XI of the Treaty we do not find the word "inhabitants" in the English or the word "habitantes" in the Spanish; we find the word "citizens" in the English and the word "ciudadanes" in the Spanish. This Article XI provides that Spaniards residing in the ceded territory "shall be subject in matters civil as well as criminal to the Juris-

diction of the Courts of the country wherein they reside, pursuant to the ordinary laws governing the same; and they shall have the same right to appear before such Courts, and to pursue the same course as CITIZENS of the country to which the Courts belong."

Court

If as claimed by the District Court Article XI means that Spaniards charged with crime possess exactly the same status in Puerto Rico as the natives of the Island why did not the framers of the Treaty use the words "inhabitants" and "habitantes" in Article XI as they did use them in Articles IX and X? Until Congress shall act under the last clause of Article IX the civil rights and political status of the natives of the Island are undetermined and we may say in abeyance. They may or may not be "citizens" later. They are certainly not "citizens" now and the only "citizens" of Puerto Rico today are Americans. Therefore the conclusion is unavoidable that today at least a Spanish subject residing in Puerto Rico charged with crime possesses the same right to have a trial in the Provisional Court as an American has. And the District Court of San Juan admits that it possesses no power to try Americans charged with crime.

It has been urged by the District Court of San Juan that it alone has jurisdiction in the present cause because of the expression "Courts of the country" in Article XI of the Treaty, thus intimating that the Provisional is not a "Court of the country." It is sufficient reply to this question to say that the same power which created one court created the other, to wit, the Commanding General of the Department. And it is interesting to observe, although of no legal importance, that the Provisional Court was created first. General Order 88 creating the Provisional Court bears date June 27th, 1899, and General Order 118 creating the District Court of San Juan bears date August 16, 1899. And although

the District Court superseded a former Insular Court the latter Court derived its power by General Order No.1 issued by General Brooke, dated October 18, 1898.

Even if it be conceded that said phrase "Courts of the Country" means the local or insular courts it does not follow that jurisdiction is denied by the Treaty to the Provisional Court. To adopt this construction would be to nullify the latter clause of Article XI. This clause says that "they shall have the right to appear before such courts (not said courts) and to pursue the same course as citizens of the country to which the Courts belong." It is submitted that this word "such" has reference to what follows and not to what precedes it, and that therefore the true meaning of this clause is that Spaniards living in the Island shall have the right to appear before such courts as citizens may appear before and that Spaniards shall also have the right to pursue the same ~~right~~ course as citizens may pursue. If it be held that this word "citizens" can not mean Americans residing in Puerto Rico I can not conceive that it means anything. Suppose that Congress sees fit to withhold citizenship from the natives of the Island for ten years. It has that power. It may exercise it. Then if the contention of the District Court be correct there will be no citizens in the Island for the next ten years and the clause conferring equal rights on Spaniards would be imperative until 1909. This is inconceivable.

In conclusion I deem it just to the Provisional Court to say that it (the Provisional Court) did not seek jurisdiction of this particular case. The three defendants who had been in the jail at San Juan since May without any trial requested that the case be heard by this Court. They probably knew or had reason to believe that as Spaniards the case was properly triable by this court. At least this Court had in its possession a paper signed by the defendants requesting a trial by this Court, not because of their nationality, but

also because they were tired of being locked up without a trial and thought (correctly) that they would have a speedy hearing in this Court. When this application reached this Court it became the duty of the Acting Prosecuting Attorney to investigate the matter and honestly believing that the jurisdiction existed an information was filed. Whatever may be the final outcome of this unfortunate occurrence the undersigned will have an entirely clear conscience in having honestly attempted to perform what he considered a plain duty; whereas if he had declined to act as requested by the defendants he would have deemed himself guilty of withholding from these three Spaniards a right to which they are entitled, and he who shirks a duty is unworthy to be invested with such duty.

Respectfully submitted,

(Sgd) Arthur J. Odlin

Acting Provisional U.S. Attorney.

May. Sep. 2 de 1899.

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Sr. D. Roberto H. Todd.

Amigo y compatriota es-
timadísimo: leí con verda-
ra satisfacción la nota de V.
en la última carta del Sr. Pettin-
gill. - Y por la carta compren-
di cómo había V. trabajado en
favor mio el ánimo del Presi-
dente de la Corte Provisional.

Muchas gracias! En medio
del dolor que me ha producido
la arbitrariedad de que V. está
enterado, tengo la alegría de

encontrar mi buen amigo!

No sé corresponder y espero
la ocasión de demostrar a V. la
amistad que le reitera con
afecto

~~Próspero~~