

## LEGISLATION

JUVENILE AND DOMESTIC RELATIONS COURT — Our New Civil Code provides that —

The government promotes the full growth of the faculties of every child. For this purpose, the government will establish, whenever possible:

(4) Juvenile courts.<sup>1</sup>

Although the Code was passed in 1949, it was only in the last session that Congress passed a law in compliance with the codal mandate. The law is R.A. No. 1401. However, the law, as the sponsor of the measure himself admits, is only a "partial fulfillment of the duty enjoined by the Code," for R.A. No. 1401 establishes a "juvenile court" only for the City of Manila. But it is also pointed out that the law launches an experiment, which, if successful, will pave the way for the establishment of juvenile courts as a "permanent part of our judicial system."

In the new law, there are three noteworthy features. The first refers to the jurisdiction of the juvenile court. In fixing the court's jurisdiction, the measure seems to have taken into account the observation of Justice Sanchez that —

[I]n the Philippines today, there is no single court that has lawfully been endowed with exclusive jurisdiction over cases involving juvenile delinquents. In practice, every court may, at one time or another, be a Juvenile Court. The only criterion observed is whether the court has jurisdiction over the case. If the offender therein were an adult. If so, then for that particular case, said court is a juvenile court. In other words, no court in our country is exclusively a juvenile court.

However, in the City of Manila, Branch V of the Municipal Court has, by directive of the Department of Justice, been assigned to handle all city cases in which juveniles are involved as accused. But this particular assignment does not mean to say that this Branch, No. V., does not have other assignments. Juvenile cases actually constitute only a portion of its total work. One criticism becomes immediately patent in this practice of non-exclusiveness. Every court becomes only occasionally a juvenile court. It is not the same improperly qualified to treat delinquents with the greatest advantage, for the said Court, without any fault of its own, would necessarily lack the required aptitude and training and experience.<sup>2</sup>

<sup>1</sup> Art. 359 NEW CIVIL CODE.

<sup>2</sup> Sanchez, *The Madrid Congress on Juvenile Delinquency*, 2 ATENEO L.J. 253-54 (1953).

And profiting from this criticism of prior legislation, the new law, in section 38-A, vests "exclusive original jurisdiction to hear and decide . . . criminal cases cognizable by the Municipal Court and the Court of First Instance of Manila wherein the accused is under sixteen years of age at the time of the trial."

The second important feature of the law is the increase of the jurisdiction of the "juvenile court." Departing from the traditional view that juvenile courts should be limited to cases directly affecting only minor delinquents, the measure expands the jurisdiction of the "juvenile court" to include collateral matters which may affect the character of the minor child, such as cases involving the custody, guardianship, adoption, paternity, acknowledgment, annulment of marriage, legal separation, etc. Again the law seems to have followed the Thirteenth Conclusion<sup>3</sup> (proposed by Dr. Jorge Bobo) of the Madrid Congress on Juvenile Delinquency to the effect that —

A study should be made of the jurisdiction of Juvenile courts with the end in view of broadening it, so as to include cases of abandonment of the family, maltreatment of the wife or children, guardianship and adoption.<sup>4</sup>

And finally the law establishes a procedure by which potential juvenile delinquents, described by the law as "neglected" or "dependent" children,<sup>5</sup> may be brought within the jurisdiction of the court and committed to the care and custody of any suitable person or suitable institution or to the Social Welfare Administration.

However, the law indeed is far from letter perfect. For one, while it frees the court from the technical limitations of procedural law in dealing with potential juvenile delinquents,<sup>6</sup> it continues to subject the court to the restraints of criminal procedural law in dealing with *actual* juvenile delinquents.<sup>7</sup> There is much room for improvement; but as an initial measure, R.A. No. 1410 is a worthy attempt.

[R.A. NO. 1401]

### AN ACT

CREATING A JUVENILE AND DOMESTIC RELATIONS COURT IN THE CITY OF MANILA, AMENDING FOR THIS PURPOSE REPUBLIC ACT NUMBERED FOUR HUNDRED AND NINE, OTHERWISE KNOWN AS THE CHARTER OF THE CITY OF MANILA.

SECTION 1. Republic Act Numbered Four hundred and nine is amended by

The conclusion finds its equivalent in article 139 of the proposed Code of Crimes.

Sanchez, *supra* note 2, at 255.

R.A. No. 1401 § 1 (38-B).

*Id.* § 1 (38-C) par. 4.

*Id.* § 1 (38-D).

inserting between sections thirty-eight and thirty nine thereof a new article to be known as Article VIII-A, to read as follows:

"ARTICLE VIII—A. Juvenile and Domestic Relations Court.

"SEC. 38-A. *The Juvenile and Domestic Relations Court.* There shall be a Juvenile and Domestic Relations Court in the City of Manila for which a judge who shall possess the same qualifications, enjoy the same privileges and receive the same salary as judges of courts of first instance, shall be appointed by the President of the Philippines with the consent of the Commission on Appointments.

"Provisions of the Judiciary Act to the contrary notwithstanding, the court shall have exclusive original jurisdiction to hear and decide the following cases after the effectivity of the Act:

"(a) Criminal cases cognizable by the Municipal Court and the Court of First Instance of Manila wherein the accused is under sixteen years of age at the time of the trial;

"(b) Cases involving custody, guardianship, adoption, paternity and acknowledgment;

"(c) Annulment of marriages, legal separation of spouses, and action for support;

"(d) Proceedings brought under the provisions of Articles one hundred sixteen, two hundred twenty-five, two hundred fifty-two and three hundred thirty-two of the Civil Code;

"(e) Petitions for the declaration of absence and for the change of name;

"(f) Actions for the separation of property of spouses;

"(g) Proceedings affecting a dependent or neglected child, as hereinafter defined.

"The court shall likewise have such incidental powers as are generally possessed by Courts of First Instance.

"If any question involving any of the above matters should arise as an incident in any case pending in the ordinary courts, said incident shall be determined in the main case.

"SEC. 38-B. *'Dependent' or 'neglected' child defined.* — The term 'dependent child' or 'neglected child' shall mean any child under sixteen years of age who is dependent upon the public for support or who is destitute, homeless or abandoned, or who has no proper parental care or guardianship, or who habitually begs or receives alms, or who is found living in any house of ill fame or with any vicious or disreputable person, or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such child.

"SEC. 38-C. *Proceedings concerning a 'dependent' or 'neglected' child.* — If the Social Welfare Administrator or his representative who is a resident of the city, having knowledge of a child in the city who appears to be a 'dependent' or 'neglected' child may file with the clerk of the court a written petition setting forth the facts constituting the child 'dependent' or 'neglected,' which petition shall be verified by the affidavit of the petitioner. It shall be sufficient, if the affidavit shall be upon information and belief. Such petition shall set forth

the name of the parent or parents of such child, if known, and their residence; and if such child has no parent living, then the name and residence of the guardian of such child, if it has one.

"Upon the filing of such petition, the judge of said court shall fix the day and time for the hearing of such petition. If it appears that one or both of such parents, or guardian, if there be no parents, reside in the city, the clerk of said court shall immediately issue summons, which shall include a copy of the petition, and which shall be served on such parent, parents, or guardian, if any, if either can be found in the city, not less than two days before the time fixed for said hearing, requiring them to appear on said day and hour to show cause, if any, why such child should not be declared by said court to be a 'dependent' or 'neglected' child. If it appears from the petition that neither of said parents is living, or do not reside in the city and that said child has no guardian residing in said city, or in case one or both of said parents, or the guardian in case there be no parents, shall indorse on said petition a request that the child be declared a 'dependent child', the court may thereupon proceed to a hearing of the case. In case neither of the parents or guardian is found, then the court shall appoint some suitable person to represent said child in said case.

"Upon such hearing of such case the child shall be brought before said court; whereupon, the court shall investigate the facts, and ascertain whether the child is a 'dependent child', its residence, and, as far as possible, the whereabouts of its parents or near adult relatives, when and how long the child has been maintained, in whole or in part, by private or public charity, the occupation of the parents, if living, whether they are supported by the public or have abandoned the child, and to ascertain, as far as possible, if the child is found dependent, the cause thereof. The city fiscal, when requested by the court, shall appear in any such examination in behalf of the petitioner. It shall be the duty of the city fiscal, upon the request of the court or any petitioner, to file a petition and to conduct any necessary proceedings in any case within the provisions of this article.

"In the hearing of such case, the court shall not be bound to follow the technical rules of evidence. If the said child shall be found after such hearing to be a 'dependent' or 'neglected' child, as defined herein, it shall be adjudged a 'dependent child'; and an order may be entered making such disposition of the care and custody of said child as the court deems best for its moral and physical welfare. It may be turned over to the care and custody of any suitable person or suitable institution in the city organized for the purpose of caring for 'dependent children', and which is able and willing to care for the same. If there be no such person or suitable institution, the child shall be referred to the Social Welfare Administration. And when such child is so turned over to the custody of such person or institution, such person or institution, shall have the right to the custody of said child, and shall be at all times responsible for its education and maintenance, subject at all times to the order of the court.

"In any case where the court shall award any 'dependent' or 'neglected' child to the care of any individual or institution, the child, unless otherwise ordered, shall become a ward and be subject to the guardianship of the institution or individual to whose care it is committed. Any institution or individual receiving any such child under the order of the court shall be subject to visitation or inspection by any person appointed by the court for such purpose; and the court, may at any time require from any institution or person a report containing such in-

formation as the court shall deem proper or necessary, to be fully advised as to the care, education, maintenance and moral and physical training of the child, as well as to the standing and ability of such institution or individual to care for such child. The court may change the guardianship of such child, if, at any time, it is made to appear to the court such change is to the best interests of the child. If, in the opinion of the court, the causes of the dependency of any child may be removed under such conditions or supervision for its care, protection and maintenance as may be imposed by the court, so long as it shall be for its best interests, the child may be permitted to remain in its own home and under the care and control of its own parent, parents or guardian, subject to the jurisdiction and direction of the court; and when it shall appear to the court that it is no longer to the best interests of such child to remain with such parents or guardian, the court may proceed to a final disposition of the case.

"In case any child is adjudged to be 'dependent' or 'neglected' then such parents or guardian shall thereafter have no right over or to the custody or services of said child except upon such conditions in the interest of such child as the court may impose, or where, upon proper proceedings, such child may lawfully be restored to the parents or guardian.

"SEC. 38-D. *Proceedings in other cases.* — In the hearing and disposition of cases other than that covered by the preceding section, the court shall be governed by the Rules of Court and the laws properly applicable in each particular case.

"In cases between husband and wife, and between parent and child, however, the hearings may be held, upon petition of any party, in chamber or with the exclusion of the public. All information obtained at such hearings shall be deemed privileged and confidential and shall not be divulged without approval of the court.

"SEC. 38-E. *Appeal from decision and order of the Court.* — Decisions and orders of the court shall be appealed in the same manner and subject to the same conditions as appeals from the court of first instance.

"SEC. 38-F. *The clerk of court and subordinate employees.* — The Juvenile and Domestic Relations Court shall be a court of record and shall have a clerk of court and such subordinate employees as may be necessary who shall be appointed in the same manner and shall receive the same compensation as similar officials and employees of the court of first instance."

SEC. 2. Upon the organization of the Juvenile and Domestic Relations Court the Secretary of Justice shall cause all cases and proceedings pending before the municipal court and the court of first instance of Manila properly cognizable by the court herein created to be transferred thereto.

SEC. 3. The sum of seventy-five thousand pesos is hereby appropriated out of any funds in the National Treasury not otherwise appropriated, for the salary and emoluments of the judge and personnel of this court as well as for the rental and other incidental expenses of the court and shall include a similar amount thereafter in the annual general appropriation acts.

SEC. 4. This Act shall take effect upon its approval.

Approved, September 9, 1955.

## DOUBLE JEOPARDY IN ONE AND THE SAME CAUSE

Ricardo G. Nepomuceno, Jr.\*

NO rule of law has perhaps a shorter line of precedents in this jurisdiction and no doctrine has been more assailed than that which prevents the Government, on the ground of double jeopardy, from appealing a judgment of the lower court in a criminal case. And understandably so. For the doctrine that there may be more than one jeopardy in one and the same cause is of recent vintage, adopted by the United States Supreme Court only in 1904, in the case of *Kepner v. United States*;<sup>1</sup> and, though the rule has been subsequently followed by our Court, it cannot yet be said to have been firmly established.

Prior to that decision, the principle followed in the Philippines was that the accused was exposed, in a single case, to only one jeopardy, and the protection against double jeopardy applied only to "a trial in a new and independent cause where a man had already been tried once."<sup>2</sup>

That was the prevailing rule under Spanish law, which first introduced into the Islands the legal concept of double jeopardy. Two actions, two accusations were necessary before the accused could utilize the defense.<sup>3</sup> And where there was only one cause, there could be but one jeopardy which terminated when the judgment in the case became final and unalterable.

Under [Spanish law] . . . a person was not regarded as being in jeopardy in the legal sense until there had been a final judgment in the court of last resort . . . . The trial was regarded as one continuous proceeding, and the protection given was against a second conviction after this final trial had been concluded in due form of law.<sup>4</sup>

That, too, was the rule adopted by the Philippine Supreme Court in the early cases of *United States v. Perez*,<sup>5</sup> *United States v. Kepner*,<sup>6</sup> and *United*

\* A.B., Ateneo de Manila, 1953; LL.B., 1956.

<sup>1</sup> 11 Phil. 669 (1904).

<sup>2</sup> *Kepner v. U.S.*, 11 Phil. 669, 703 (1904) (dissenting).

<sup>3</sup> The *Fuero Real* provided that, except in a few specified cases, "after a man, accused of any crime has been acquitted by the court, no one can afterwards accuse him of the same offense." The *Siete Partidas* contained a similar provision.

<sup>4</sup> *Kepner v. U.S.*, 11 Phil. 669, 698 (1904).

<sup>5</sup> 1 Phil. 203 (1902).

<sup>6</sup> 1 Phil. 396 (1902).