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Decision of Federal Judge in San Juan Is That Island Is a Fully Constituted Territory of the United States

By special correspondent of The Christian Science Monitor

SAN JUAN, Porto Rico--In a decision upon a motion for a writ of habeas corpus on behalf of a Porto Rican, Judge Peter J. Hamilton of the Federal District Court here, ruled this week that Porto Rico is a fully incorporated territory, a part of the United States, and that the Constitution of the United States is wholly applicable here. This opinion holds, in substance, that there cannot be two kinds of American citizenship, one which entitles the citizen to all the rights and privileges under the Constitution, and one extending only a part of these privileges; and, according to this decision, the fifth amendment of the Constitution, providing that "no person shall be held to answer for capital, or otherwise, infamous crime, unless on a presentment or indictment of a grand jury," applies to Porto Rico, and if this ruling stands it will be necessary for the insular Legislature to enact a grand jury law and one providing for the trial by jury of civil and misdemeanor cases.

"Those formerly called Porto Ricans are now fully Americans in every sense of the word, and can claim all the political and personal rights which Americans can claim in territories incorporated into the Union, that is to say, in districts made part of the United States," says Judge Hamilton in his opinion. According to the opinion of the court, it was the passing of the Jones bill, or the granting of American citizenship, which was the final act of Congress which brought about the incorporation of the people of Porto Rico into the United States.

Continuing, the opinion states: "If incorporation may be a gradual process, Federal legislation furnishes many indices that it has passed the line which keeps Porto Rico isolated from national life. If it be necessary that it be effected by one act of Congress, it was conferred by the Jones act when, above all things, it made the local Porto Rican American citizens. The fact that Congress failed to enumerate the grand jury and the like in the bill of rights is immaterial. The Constitution fills out the enumeration where Congress had left an omission. Incorporation once made is complete and permanent, and Congress cannot revoke or limit it, even if it so desired. And such desire cannot be presumed.

"Enumeration of the rights was unnecessary, and the Constitution supplies every lack and omission. Porto Rico is not only incorporated into the Union in every sense of the word, but is an instance of the grant to territories having special conditions of special civil and personal rights made proper by new conditions. The territorial system is not limited to the old one found in the Revised Statutes. Under the Constitution there is room in the Federal system for all kinds of territories. The Federal system requires the reservation only of national rights; all local privileges consistent therewith can be granted to what are called territories. In the Federal system there is room for everything except independent states. It follows, therefore, that the fifth amendment to the Constitution applies to Porto Rico."

The motion for a writ of habeas corpus was made on behalf of Carlos Tupa, held on a charge of attempted murder on a commitment issued by Judge Jose Bonafante of the Insular District Court. Tupa is charged with having fired a revolver at Capt. W. J. Kennerton during the recent strike of dock laborers. P. H. Dexter and Willis Havel appeared on behalf of Tupa, while Attorney-General Kern and George R. Bevington of the Attorney-General's office, opposed the granting of the writ. The proceedings were brought as a test case to determine whether or not the Constitution was wholly applicable to Porto Rico.

The decision of Judge Hamilton will be appealed, and the appeal will go direct to the United States Supreme Court.