NOTES *and* COMMENT

What Is Public Policy?

By SOCORRO TIRONA

NOT infrequently, the student of law comes across decisions of the courts based on grounds of "public policy". Students of law often comment on certain acts or proceedings as against "public policy". Lawyers, in arguing their cases, invoke the "public policy" of the state. There is nothing objectionable in the use of the term in all of these cases if there really exists a public policy of the kind invoked. The fact, however, is that the principle is generally resorted to every time a provision is believed to be unfair or oppressive in its operation, or to violate our notions of natural justice.

The term "public policy" is vague and unsatisfactory and may lead, as often it does, to uncertainty and error when applied to the decision of conflicting legal rights. "Public policy may, and does in the ordinary sense mean 'political expedience' or that which is best for the common good of the community; and in that sense there may be every variety of opinion according to education, habits, talents and dispositions of each person who is to decide whether an act is against public policy or not. To allow this to be a ground of judicial decision would lead to the greatest uncertainty and confusion." (Baron Parke in Egerton v. Brownlow, 4 H. L. Cases 1).

Justice Gage, in McKendree v. Southern States Life Ins. Co., (112 S. C. 353), aptly described public policy as "a wide domain of shifting sands. The term in itself imports something that is uncertain and fluctuating, varying with the changing economic needs, social customs, and moral aspirations of a people."

It is not, however, the purpose of this paper to condemn the use of the principle altogether, for nothing can be more in accord with the correct administration of justice than that an act which is clearly contrary to the public policy of the state should be declared void and ineffective. Rather, this article will attempt to define the term "public policy" and to discuss the proper scope of the judicial power to declare the public policy of the state.

The term "public policy" has been defined as "that principle of law which holds that no subject can lawfully do that which has a tendency to be injurious to the public, or against the public good, sometimes termed the 'policy of the law' or public policy in relation to the administration of law." (Egerton v. Brownlow, supra). The term has been considered in Billingsley v. Clelland (41 W. Va. 234) as equivalent to the expression. "the policy of the law." In Johnston v. Chicago G. W. R. Co. (164 S. W. 260) it was said: "The term 'policy of

the law' or 'public policy' is difficult to define. . ."

Thus we see from the foregoing that the term "public policy" has been considered synonymous with "policy of the law". These two terms are so closely related that apparently they mean the same thing. However, we shall find that this is not the case. Justice Crosswell, recognizing the distinction, said, "I have already observed that I presume, we are not asked our opinions as to public policy, but as to the law. I apprehend that when in our law books of reports we find the expression, it is used somewhat inaccurately instead of the policy of the law." (Egerton v. Brownlow, supra.)

Every law passed by the legislature has a policy behind it—the policy of the law. But it cannot be denied that not all laws passed are backed up by sound policies. There are laws "so far removed from consideration of abstract justice that they are necessarily founded on the mere will of the legislative power." (2 Rawle's 3rd Rev., Bouvier's Dictionary 1881).

Consider a specific instance in the Civil Code passed by the lawmaking body of Spain, which was extended to the Philippines in 1889 to form the substantial portion of our substantive law. Article 143 of the Code specifies in the persons who are bound to support each other, among whom, besides the legitimate relatives, are the acknowledged natural children and the illegitimate children, with respect to their illegitimate parents. An unacknowledged natural child therefore has no right to claim support from its father, not being one of those enumerated by the law. In fact, the unacknowledged natural child has no rights whatever, against its father. (Buenaventura v. Urbano, 5 Phil. 1; Infante v. Figueras, 4 Phil. 738; Brig v. Brig, 43 Phil. 763.) It is the policy of this provision of the Civil Code to deny the unacknowledged natural child even the right to a bare support from its father. Is it the policy of the state, in upholding the interests of society and the general welfare of the community to allow the irresponsible procreation of children without the corresponding obligation of giving them the bare necessities of life, if not of rearing them up to be wholesome and desirable citizens?

The policy of this provision of the Civil Code would seem harsh and unreasonable and not in accordance with sound policy. But even if it be so, it still is the "policy of the law." Thus, we see here an example of a policy of the law which is not in conformity with the principle of public policy. The general rule, however, is that in passing a law, the legislature bears in mind the public good and everything done under the law must be consistent with the interests of society and with sound policy. In a law of this kind, the policy of the law conforms with the public policy and is almost, if not, identical with it. For example, "there are two principal grounds on which is based the doctrine that a contract in restraint of trade is void: one, is the injury to the public by being deprived of the restricted party's industry (public policy); and the other is the injury to the party himself, by being precluded from pursuing his occupation and thus being prevented from supporting himself and his family (policy of the law)." (Oregon Steam Navigation Co. v. Winsor, 20 Wall. 64)

Another source of mistake and confusion in the use of the principle of public policy is the belief that what in the court's opinion is inconsistent with the common good should be declared void as against public policy. Thus, we have judges who, speculating upon what is best in their opinion for the good of the community, lay down rules amounting to judicial legislation.

The proper scope of the judicial power to declare the public policy of the state may be clearly defined by distinguishing between cases involving statutes claimed to be contrary to the public policy of the state, and cases involving contracts and other transactions. We may, however, lay down the general rule that an act or transaction, possible and legal, may not be declared void as against public policy just because in the opinion of the judge it is not expedient to be done. "The public policy of a state is not to be measured by the private convictions or notions of the individual judge . . ." (Picket Pub. Co. v. Brd. of Carbon County, 92 Pac. 924). According to Justice Deady of the U. S. Circuit Court, "Public policy is manifested by public acts, . . . not private opinion, however eminent." (Giant Powder Co. v. Oregon Pac., 8 L.R.A. 700).

It is to be observed that the rule on judicial power to declare public policy with regards to contracts gives the court comparatively greater scope. Justice Story says, "Public policy has never been defined by the courts, but has been let loose and free from definition in the same manner as fraud. This rule may, however, be safely laid down, that wherever any contract conflicts with the morals of the time, and contravenes any established interest of society, it is void, as being against public policy." (Story, Conflict of Laws, Sec. 546).

The courts, however, exercise great caution in declaring contracts void on ground of public policy. The Court of Appeals in Montgomery v. Montgomery (127 S. W. 119) quotes with approval the following statement from Smith v. Du Bose (78 Ga. 413): "Judicial tribunals hold themselves bound to the observance of rules of extreme caution when invoked to declare a transaction void on grounds of public policy and prejudice to the public interest must clearly appear before the court would be warranted in pronouncing a transaction void on this account. It is said that the power of courts to declare a contract void for being in contravention of sound public policy is a very delicate and undefined power, and like the power to declare a statute unconstitutional should be exercised only in cases free from doubt."

In Janson v. Driefantein Consolidated Mines (5 B.R.C. 822) the court held that "it is not necessary to go through all the principles of law which may make a contract altogether illegal; they are defined legal principles known to and absolutely fixed as part of our law, and a judge is called upon to bring the instrument he has to construe to the test whether it is or is not within such principles; but he has no jurisdiction to bring into discussions his own views of what he may consider an expedient thing in his own peculiar view of public policy. To permit such a discussion to arise it must be a question of some public policy recognized by law."

As to the court's power to declare public policy in Statutes, we quote Justice Marshall (Model Bldg. Loan Asso. v. Julian, 61 L.R.A. 668: "We know of no ground upon which a constitutional legislative enactment can be rightly spoken as contrary to public policy. What is and what is not public policy must obviously be determined by the written and unwritten law, giving precedence to the former where the two are in conflict. Laws are never said to be contrary to public policy in any other sense than contrary to constitutional policy. Statutes are not tested by any rule of public policy. We look to the statutes as well as the unwritten law to determine what is and what is not public policy and then we test acts *inter* partes by the result. If such acts are not directly the subject of legislation, we say they are contrary to public policy. . ."

It has been invariably held by the courts that "the public policy of the state is to be found in the Constitution and statutes and when these are silent, in its judicial decisions (Griffith Co. v. National Fire Ins. Co., 38 A.L.R. 559: People of Illinois v. Emerson, 21 A.L.R. 636: Johnston v. Chicago Co., 164 S.W. 260: Scott v. Dircks, 211 Mo. 580; Hartford Fire Ins. Co. v. Chicago, 30 L.R.A. 193; U. S. v. Trans-Missouri Freight, 166 S.W. 290).

In Swann v. Swann (21 Fed. 301), it is aptly said: "Vague surmises and flippant assertions as to what is the public policy of the state or what would be shocking to the moral sense of its people are not to be indulged in. The law points out the sources of information to which the courts must appeal to determine the public policy of a state. The term as it is often popularly used and defined makes it an unknown and variable quantity much too indefinite and uncertain to be made the foundation of a judgment. The only authentic and admissible evidence of the public policy of the state on any given subject are its constitution, laws, and judicial decisions. The public policy of the state of which courts take judicial notice and to which they give effect must be deduced from these sources."

To quote C. Seddon in Re Estate Jacob Rahn (51 A. L. R. 877): "It seems clear to us therefore from the great weight of judicial authority, that no act or transaction should be held void as against public policy unless it contravenes some positive, well-defined expressions of the will of the people of the state or nation, as an organized body politic, which expression must be looked for and found in the Constitution, statutes, or judicial decisions of the state or nation, and not in varying personal opinions and whims of the judges or courts, charged with the interpretation and declaration of the established law as to what they themselves believe to be the demands or interest of the public. So it necessarily follows that courts should exercise extreme caution in declaring any act or transaction void as against public policy, unless it clearly appears that the transaction contravenes the constitution, some positive statute or some well established rule of law announced by the judicial decisions of the state or nation."

Our Supreme Court recently laid down the following rule: "Courts should not rashly extend the rule which holds that a contract is void as against public policy. The term 'public policy' is

vague and uncertain in meaning, floating and changeable in connotation. It may be said, however, that in general, a contract which is neither prohibited by law nor condemned by judicial decision, nor contrary to public morals, contravenes no public policy. In the absence of express legislation or constitutional prohibition, a court in order to declare a contract void as against public policy must find that the contract as to the consideration or thing to be done, has a tendency to injure the public, is against the public good, or contravenes some established interest of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights, whether of personal liability or of private property." (Leoncio Gabriel v. Monte de Piedad, G. R. No. 47806, April 14, 1941).

In conclusion, we may define public policy as that principle which upholds the interests of society and the general welfare of the community and which may be found in the spirit and language of the Constitution, legislative enactments, and in some well-established rule of law as declared in judicial decisions. Courts must, therefore, refer to these sources in determining the public policy of the state and never to their personal ideas and beliefs as to what seems expedient to be done.

Legal Effects Of Plurality Of Crimes

By ADRIANO R. GARCIA

GENERALLY speaking, the the theory of criminal jurisprudence embodied by the Revised Penal Code is not materially different from that in English-speaking countries. What is punished by law is not a state of mind, but that which the law indissolubly joins to the nature of the act committed. (U. S. vs. Cariaga, R. G. No. 9832, dissenting opinion of Justice Moreland).

A distinction must be laid down between "joint" and "common" criminal intent. The same intention may be common to two or more persons. Being common, they are both alike, but *personel* to each party. Obviously, what is meant by the term "joint criminal intent" has reference to an act which has been made the subject of a conspiracy. In such a case, the act of a co-conspirator made in furtherance of the conspiracy is deemed to be the act of all. Hence, there may be *joint action* or *joint interests* but there is no joint intent or purpose. It is hard, therefore, to conceive of an actual illustration of "joint criminal intent" for the term is often mis-used. The better practice would be to use the term "common criminal intent", a common *animus*. (U. S. vs. Topino and Guzman, 35 Phil. 601).

For purposes of this discussion, the issue resolves itself into this problem: What penalty should be imposed upon a person who rapes or kills two or more persons on one single occasion? Should he be held guilty of only one crime or should he be convicted of as many crimes as may result from his criminal act?

Noted commentators have advanced the view that in order for real plurality of crimes to exist the following requisites must concur: First, that a person be the author of different acts: second, that these acts be in their material respects different; third, that they be also different and independent in the conscience of the offender. (Pessina, Derecho Penal, par. 131, cited in Guevara's Criminal Science, p. 150).

It is not to be doubted that two or more criminal acts constituting an indivisible, complex offense must be punished as one crime only either because there is an express provision in the Revised Penal Code to that effect, or due to the very nature of the crime committed. For example, the crime of robbery with homicide is a complex offense, as defined and described in Art. 294 of the Revised Penal Code. But this method of classifying offenses has been mercilessly criticized on the ground that the Code, in declaring a single act as constituting several delictive offenses, *did not define a new crime*. It would seem illogical, therefore, to unite several crimes when they constitute separate and distinct offenses. (Decision of the Supreme Court of Spain, Feb. 10, 1868).

There are some crimes which are considered one in fact and in law. For instance, the crimes of adultery and concubinage cannot be committed by one person alone. As to the guilty parties, the crime is indivisible and the agency committing it is also indivisible. This is the view adhered to by the French courts. (U. S. vs. Topino

and Guzman, dissenting opinion of J. Moreland)

As far back as the days of Justice Arellano, the Supreme Court has upheld the view that a person who shoots down his victims in cold blood should be convicted of multiple homicide, it appearing "that although the two shots were fired successively, they constitute not a single act, but two acts wholly distinct not only on account of their intrinsic duality, but also because they were directed against two different persons." (U. S. vs. Ferrer, 1 Phil. 56)

This doctrine was abruptly discarded when, in a long line of subsequent decisions, it was held that when a single criminal act, impelled by a single criminal intent, produces several consequences, only one offense was committed and the unity of criminal intent cannot be modified by the accidental circumstance that the article unlawfully taken belonged to two distinct persons. Hence, if a person commits the crime of rape on three girls, or satisfies his carnal desires upon a single girl for two or more successive times, he is to be deemed guilty only of one crime of rape. (U. S. vs. Gustilo, 19 Phil. 208; U. S. vs. Iglesia, 21 Phil. 55; U. S. vs. Camiloy, 36 Phil. 757; People vs. Solon, 47 Phil. 443; People vs. Amante, 49 Phil. 679; People vs. Pineda, 56 Phil. 688).

All these decisions were obviously founded on the continuous offense theory (Viada, 5th ed. Vol. 2 p. 608) applicable to acts performed on one single occasion, with the same criminal impulse and objective. (People vs. Moreno, 34 Off. Gaz. 1767). If this view were not followed, it would seem possible to convict a man of rape as often as the number of times he had tasted the forbidden fruit, for under the doctrine laid down in the case of People vs. Hernandez (49 Phil. 447) each penetration is under the law to be punished as a distinct crime.

The argument that the persons accused in all these cases were convicted only of one crime because they were charged with a single offense is not tanable because the acts found were all alleged in the information. And it is well-settled that the offense charged is not what the fiscal terms it in the information, but what the facts alleged in the information reveal. (People vs. Teves 44 Phil. 275; People vs. Miana 50 Phil. 771; People vs. Alafriz 53 Phil. 383; People vs. Benito 57 Phil. 587; People vs. Medina 59 Phil. 134; People vs. Policher 60 Phil. 770) The highest tribunal in Spain has held that if a person commits the crime of rape on a girl, together with another person, the partners in crime ought to be held guilty only of one crime. (Dec. of Sup. Ct. of Spain, May 3, 1881; May 19, 1885; October 18, 1893).

In an unpublished decision, the Supreme Court has laid down the ruling that where, as a result of a single act, two or more deaths occur, such act is punishable only as one offense and not for each distinct death. (People vs. Porfirio Garcia, G. R. No. 3185. decided Oct. 12, 1938).

In the United States, successive acts in the same transaction may constitute separate offenses and be separately punished. (Ebeling vs. Morgan 237 U. S. 625). For instance, receiving deposits from two different people in an insolvent bank on the same day consti-

tutes, two separate offenses. (Martin vs. State 85 A.L.R. 512). The shooting of three men by separate shots fired from a pistol successively is *not* a single act, since it constitutes three different offenses. This is in direct contradiction to the doctrine laid down in the Garcia case, *supra*. (State vs. Corbett, 66 L. ed. 787).

Under the Federal Criminal Code, each successive act of cutting into mailbags with intent to rob is a separate and distinct offense. (Sec. 189, 18 U.S.C.A. Section 312).

Lately, however, Philippine courts have leaned towards the American view. In the case of People vs. Bernardo (38 Off. Gaz. 3479), the defendants were convicted of double rape, following the doctrine laid down in the case of People vs. Bretana (49 Phil. 444).

Returning to its former tendencies, the appellate tribunal upheld the doctrine in the Gustilo and Iglesia cases when it recently decided to convict a person of *only one crime of theft,* in spite of the fact that he had stolen thirteen cows. Thus reasoned the court, "as neither the intention nor the criminal act is susceptible of division, the offense cannot be divided into separate crimes, it being immaterial that the subject-matter is singular or plural". The defendant was acquitted on the ground that he had already been placed in jeopardy when he was previously convicted of the theft of eight cows, part of the group of thirteen which he has stolen. (People vs. Tumlos, 40 Official Gazette 45, decided April 13,

Twelve days later, all possible doubt was removed when the same court reversed its stand on plurality of crime. In clear-cut, unmistakable language, the court stated that where two deaths and various serious physical injuries have resulted from a single act performed by the accused, only one penalty should be imposed upon him *since only one single information* was filed charging him with double homicide with serious physical injuries through reckless imprudence. (People vs. Villamora, 40 Official Gazette 769, decided April 25, 1941). Therefore, if separate informations had been filed charging one crime of homicide for each distinct death, the appellate tribunal would have rendered judgment accordingly.

To the advocates of the continuous offense theory, we venture to pose this hypothetical question: Let us suppose that a man kills two persons. He is convicted of the death of one victim. Subsequently, the heirs of the other victim bring an action for the recovery of civil liability. Under the doctrine laid down in the Tumlos case, there was an indivisible criminal intent which animated the criminal act, hence the defendant's conviction in one case would place him in double jeopardy. In that eventuality, the heirs of the other victim would be left without a remedy.

Voicing an indignant protest against the disastrous consequences resulting from the application of the theory in the Tumlos case, the author is strongly inclined to believe that the doctrine laid down in the Villamora case is more in accord with equity and penal justice.

Can There Be Direct Contempt Of Court By Publication?

By ALBERTO MEER

THE inherent power of courts to punish contempt has long been recognized as necessary for the preservation of the dignity and respect to which all courts of justice are entitled. A court should not only have the power to enforce its decisions; it must also have the power to protect itself against unwarranted disturbances and acts of disrespect. In the Philippines, contempt of court is defined in Rule 64 of the New Rules of Court. It is classified into direct and indirect contempt, the former being punishable summarily and the latter, only after due charge and hearing. Sec. 1 of Rule 64 defines direct contempt as "misbehavior in the presence of the court or so near a court or judge as to interrupt the administration of justice, including disrespect toward the court or judge, offensive personalities towards others, or refusal to be sworn or to answer as a witness or to subscribe an affidavit or deposition when lawfully required so to do." As far as the interpretation of the clause "misbehaviour in the presence of the court" is concerned, there is little if any doubt. However, the second part which covers that misbehaviour which is "so near a court or judge as to interrupt the administration of justice" has long been the source of controversy and doubt. Whenever courts attempted to include within its summary contempt jurisdiction acts committed outside the court room, it has always been met with severe criticism and popular disapproval, both in England and in the United States. This has been particularly so with respect to the exercise of the contempt power by the judiciary in order to punish the authors of publications allegedly contemptuous. Indeed, no other portion of the summary power has been assailed so vigorously and for such a long time.

Cromwell Holmes Thomas in his "Problems of Contempt of Court" enumerates three types of contempt by publications which have been generally recognized:

1. The publication of court proceedings.—This embraces publication of false and inaccurate accounts of judicial proceedings without authorization. Although the power to punish such publications for contempt has been recognized yet there has been no instance of punishment under this type of contempt. It may be said that this type includes also the act of publishing secrets of the court in defiance to orders, but this properly falls under the violation of any court order.

2. Publications which scandalize the court,—such as accusations that the administration of justice has been corrupt, that the court has been prejudiced, that the court has been bribed, or has played politics, etc. All such charges however are defamatory in nature, and may be punished as libel or made the subject of civil action for damages.

3. Contemptuous publications with respect pending cases.—This includes libelous attacks on the

parties to the case, publication of prejudicial matter which could not be introduced in evidence, attempting to influence the decision by means of threats or intimidation or taking violent partisan stand upon any question before the court.

Whether or not this last type of publication may be summarily punished as contempt is the question which this comment seeks to answer. A closer study of this question would reveal to us a conflict between two principles—the principle recognizing the constitutional guaranty of the "freedom of the press" and the principle enunciating the sacredness of the judiciary and that the rights of the individual are subordinate to public welfare.

Until recently the courts of the United States and the Philippines have almost invariably held that publications regarding the parties the judge, or the issues in a pending case which have a tendency to interrupt the administration of justice, constitute contempt which is punishable summarily (Toledo Newspaper Co. vs. U. S., 247, U. S. 421; the Sullens case, 36 F. 230; the Shepherd case, 76 S. W. 79 (Mo.); the Sheridan case, 128 F. 954; the Magee case, 224 P. 1028 (N. M.); the Shumaker case, 163 N. E. 272; In re Kelly 35 Phil. 944; In re Lozano, 54 Phil. 801; In re Torres, 55 Phil. 799; and In re Abistado, 57 Phil. 668).

However, previous to 1918 the federal courts have held the contrary view. The early view is best expressed in the case of Ex parte Poulson (19 Fed. Cas. 120) wherein it was held that the court had no power to punish for contempt a newspaper publisher for publishing an offensive article relating to a pending case. The court held that the law alludes to that misbehavior which is calculated to disturb the order of the court, such as noise, tumultuous or disorderly behaviour either in or so near the court as to prevent it from proceeding in the orderly dispatch of its business. This view was further strengthened by the decision in Ex parte Robinson (19 Wallace [U.S.] 505) wherein it was held that the power of courts to punish for contempt can be exercised only to secure decorum and order in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgments, and processes.

But in 1918, the Supreme Court of the United States in the case of Toledo Newspaper Co. vs. U. S. (supra.) decided that "a publication of articles and cartoons having reference to pending judicial action which tended and were tended to provoke public resistance to an order of injunction, should one be made, and which amounted to an attempt to unduly influence the judge with reference to his decision in the matter pending before him, constituted contempt of court included in the clause 'so near thereto as to obstruct the administration of justice'." The provision in point was Section 1 of the Act of Congress of 1831 which was incorporated in the judicial code. It provided that the "United States courts shall have the power to punish by fine or imprisonment at their discretion contempts of their authority; provided that such power to punish contempts shall not be construed to extend to any case except the misbehavior of any

person in their presence or so near thereto as to obstruct the administration of justice." The court further stated that "it is not the influence in the mind of the judge that is the criterion, but rather the reasonable tendency of the acts done to influence or bring about the baleful result." Justice Holmes however wrote a dissenting opinion, concurred in by Justice Brandeis. Justice Holmes stated that the power should be limited by the necessities of the case, "to insure order and decorum in their presence (Exparte Robinson, supra.)" He further stated that "so near thereto as to obstruct means so near as to actually obstruct and not merely near enough to threaten a possible obstruction. So near as to refer to an accomplished fact and the word 'misbehavior' strengthens my construction. Misbehavior means something more than adverse comment or disrespect. A judge of the United States is expected to be a man of ordinary firmness of character, and I find it impossible to believe that such a judge could have found in anything that was printed even a tendency to prevent his performing his sworn duty."

In this jurisdiction, the doctrine laid down in the case of Toledo Newspaper Co. v. U. S., supra, has been followed. The cases of U. S. v. Toledo (220 Fed. Rep. 458), and Ex Parte Terry (128 U. S. 289) were cited by our Supreme Court in deciding the case of In re Kelly (35 Phil. 944). In the Kelly case it was held that "the publication of a criticism of a party or of the court in which a cause is pending, has always been considered as misbehavior tending to obstruct the administration of justice, and subjects such publishers to contempt proceedings. Parties have a right to have their causes tried fairly in court, by an impartial tribunal, uninfluenced by publications or public clamor . . . Any publication, pending a suit, reflecting upon the court, upon the parties, the officers of the court, the counsel, etc., with reference to the suit, or tending to influence the decision of the controversy, is contempt of court." Subsequently, in the case of In re Lozano (54 Phil. 801), our Supreme Court citing the case of U. S. v. Sullens (supra), held that "newspaper publications tending to impede, obstruct, embarrass, or influence the courts in administration of justice in a pending suit or proceeding constitute criminal contempt which is punishable summarily by the courts. The rule is otherwise after the cause is ended. The constitutional guaranty of freedom of the press must be protected in its fullest extent. But as important is the maintenance of the independence of the judiciary. The administration of justice and the freedom of the press tho separate and distinct are equally sacred, and neither should be violated by the other. The courts must be permitted to proceed with the disposition of their business in an orderly manner, free from outside interference obstructive of their constitutional functions." The ruling in the case of In re Lozano was reiterated in the case of In re Torres (55 Phil. 799). In the latter case the court further made the statement that the power to punish contempt should be exercised with a view to correction instead of retaliation. Our Supreme Court again in the case of People v. Alarcon; Federico Mañgahas, respondent-appellant (G. R. No. 46551), after cit-

ing the cases of In re Lozano, and In re Abistado (supra), held that "newspaper publications tending to impede, embarrass, or influence courts in administering justice in pending suits or proceedings constitute criminal contempt which is punishable summarily by the courts. It must however, clearly appear that such publications do impede, embarrass and interfere with the administration of justice, before the authors are held in contempt. (Nixon v. State, 193 N. E. 591)." The respondent, however, was not held in contempt on the ground that the Court of First Instance had no power to punish him for direct contempt since the pending case was already out of the jurisdiction of the CFI, the appeal to the Court of Appeals being perfected and the case was therefore pending in the latter court.

But on April 14, 1941 last, the United States Supreme Court in the case of Nye v. United States (61 S. Ct. 810), overruled expressly the doctrine laid down in the case of Toledo Newspaper Co. v. U. S., supra. The issue before the court was whether the words "so near thereto as to obstruct the administration of justice" have a geographical or a causal connotation. The court citing the cases of Ex parte Robinson, and Ex parte Poulson (supra), decided that the clause suggests physical proximity; that they should be construed as geographical terms. The court further cited Nelles and King, "Contempt by Publications in the U. S." (28 Col. L. Rev. 530), stating that the clause "so near thereto as to obstruct the administration of justice" connotes that the misbehavior must be in the vicinity of the court. The court stated that if the "reasonable tendency" rule laid down in the Toledo case giving the clause a causal meaning were to be followed, then Sec. 268 of the Judicial Code (derived from Sec. 1 of the Act of Congress of 1831) would regain much of the generality which the Act of 1831 emphatically intended to remove due to the Judge Peck episode. The court said that it may be true that said acts were really reprehensible or of a kind which corrupts the judicial processes, and impedes the administration of justice. But the fact that it can not be punished summarily for contempt does not mean that such conduct can proceed with impunity. Their acts are sufficiently covered by the Criminal Code, Sec. 135 which was copied from Sec. 2 of the Act of Congress of 1831. In summarizing the court said," its legislative history, its interpretation prior to 1918, the character and nature of contempt proceedings, admonish us not to give renewed vitality to the doctrine of the Toledo case, supra, but to recognize the substantial legislative limitations on the contempt power which were occasioned by the Judge Peck episode."

It is a rule of construction that in interpreting provisions of law which have been copied from the statute books of other countries, the construction of the latter by the highest court of the corresponding country has a strong persuasive effect. In the past, our Supreme Court has almost invariably applied the doctrine laid down in the case of Toledo Newspaper v. U. S., supra, in construing the terms of the provisions of the law on direct contempt of

court. The Toledo case however, has been expressly overruled by the case of Nye v. United States, supra. Of course our Supreme Court is not bound by the decision of the United States Supreme Court, but such decision certainly has a strong argumentative force in the construction of Sec. 1 of Rule 64 of the New Rules of Court. Besides, Sec. 3 of the same rule on direct contempt, may be said to fairly include publications which have a tendency to obstruct the administration of justice under the following sub-sections:

(c) Any abuse or any unlawful interference with the processes or proceeding of a court;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct or degrade the administration of justice.

In view of the above provisions, the rule laid down in the case of Nye v. U. S. that the clause "so near a court or judge as to interrupt the administration of justice" suggests physical proximity, becomes all the more convincing. Publications can not be compared with noise or other disturbances committed in the presence of the court or so near as to actually obstruct or embarrass the administration of justice. The latter can not be justified and their disturbing effects are so direct that they are properly included in the summary jurisdiction of the court to punish contempt. But the nature and character of publications, the indirect effect of allegedly contemptuous articles, the guaranty of the freedom of the press, the provisions of the New Rules of Court, and the decision of the United States Supreme Court in the case of Nye vs. U. S. demand that publications be excluded from the summary jurisdiction of courts to punish contempt.