EDITORIAL:

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PUBLIC DISCUSSION OF CASES PENDING BEFORE THE SUPREME COURT

By a resolution † dated September 3, 1947, the Supreme Court, in Krivenko v. The Register of Deeds of the City of Manila, threatened with contempt public discussion of issues raised in the case. Those against whom the threat was levelled must have relied upon recent liberal decisions of the Supreme Court of the United States. (*The Supreme Court on Freedom of the Press and Contempt by Publication* by Elisha Hanson, 27 Cornell Law Quarterly p. 165; Bridges v. State of California, 314 U. S. 252, 62 S. Ct. 190, 86 L. Ed. 192; Pennekamp v. State of Florida, 328 U. S. 331, 66 S. Ct. 1029; Craig v. Harney, 67 S. Ct. 1249, decided May 19, 1947) These recent decisions overruled the common law rule of "reasonable tendency" (Toledo Newspaper Co. v. United States, 247 U. S. 402, 38 S. Ct. 560, 62 L. Ed. 1186. "Newspaper publications tending to impede, obstruct, embarrass, or influence the courts in administering justice in a pending suit or proceeding constitute criminal contempt which is summarily punishable by the courts." In re Lozano and Quevedo, 54 Phil. 801, 802) and substituted therefor the "clear and present danger" doctrine. ("The vehemence of the language used is not alone the measure of the

† "In L-630, Krivenko v. The Register of Deeds, City of Manila, the Court resolved: Recent developments have shown the necessity of reminding parties concerned that public discussions of cases pending this Court and of questions therein involved, in the press, radio or similar means of publication, constitute contempt according to a well settled doctrine in this jurisdiction. No action has been taken before by this Court because of the possibility that the pendency of the present case was not known. However, similar acts in the future will be dealt with accordingly.

"Mr. Justice Tuason believes there is no necessity for this resolution and he dissents."

"Mr. Justice Perfecto dissents as follows:

"We beg to disagree with the majority statement. There is no necessity for making a reminder either to the parties in this case or to the persons who have publicly discussed and are discussing—through the press, the radio, or other means of publication—the legal questions involved in this case. The parties are represented by attorneys and it seems that those who had been engaged in the public discussions are lawyers or experts in law. None of them need any reminder, which might be a reflection upon their knowledge and sense of duty.

"If in the public discussion alluded to them is there nothing contemptuous, there is no reason for issuing the reminder. If contempt has been committed, to make a reminder seems not to be the advisable course. There is absolutely no showing that any contempt

power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil." Craig v. Harney, *supra*, p. 1255; See also 22 PHILIPPINE LAW JOURNAL, p. 136) According to the present liberal attitude, specially as most recently expounded in Craig v. Harney ("'But the law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate." p. 1255), the public discussions intended to be suppressed by our Supreme Court may not be considered contemptuous. By above resolution, our Supreme Court clearly intended to adhere to the old rule, borrowed from the common law (See In re Kelly, 35 Phil. 944; In re Lozano and Quevedo, 54 Phil. 801; In re Torres, 55 Phil. 799; In re Abistado, 57 Phil. 668; In re Antonio Quirino, G. R. No. L-278, May 4, 1946), a rule now discredited in the land of origin. (The Supreme Court cited with approval in the case of In re Quirino, *supra*, the concurring opinion of Chief Justice Taft in Craig v. Hecht, 68 L. Ed. 293, 300. The Supreme Court of the United States referred to the same case as follows: "But a judge may not hold in contempt one who ventures to publish anything that tends to make unpopular or to belittle him * * *.' See Craig v. Hecht, 263 U. S. 255, 281, 44 S. Ct. 103, 108, 68 L. Ed. 293, Mr. Justice Holmes dissenting." Craig v. Harney, *supra*, p. 1255. This dissent was adopted by the majority of the Court.)

The application of the "clear and present danger" doctrine to contempt cases practically leaves no difference between standards set for the executive and legislative branches of the government on the one hand and that of the judiciary on the other. Nor do we believe that there should be much of a difference. Apart from the reasons already stated by the Supreme Court of the United States (See Craig v. Harny, *supra*) and that stated by Mr. Justice Perfecto in his dissent (Krivenko v. The Register of Deeds of the City of Manila, *supra*) there is statesmanship exercised in

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has been committed nor any complaint for contempt that would require action. Furthermore, we do not see anything objectionable in the public discussions in question. The theory forbidding public discussions is already outworn and obsolete, as the idea that the Supreme Court is honored as being spoken as beyond criticism. Since 1898, Mr. Justice Brewer said that "life and character of its justices should be the object of constant watchfulness by all, and its judgment subject to freest criticism. The time is past in the history of the world when any living man or body of men can be set on a pedestal and decoraled with a halo."

"If the members of the Judiciary are sure to follow the dictates of their conscience above all considerations, no one should be afraid to publicly discuss pending litigations. We are even of opinion that the national and international importance of the constitutional questions involved in this case demand a pooling of all the best of minds of the country and the most lively wakefulness in the people, who will vitally be affected by the decision. Modern democracy can only survive in a milieu of free and public discussion, from which legal questions should not be excluded. Secrecy is the minotaur which will devour the youths and maidens of Truth and Justice, and the progressive ideas which are the backbones of democracy's survival."

each of the branches of the government. (See Constitutional Revolution, Ltd. by Edward S. Corwin; Cardozo, Nature of the Judicial Process) Oliver Wendell Holmes, Jr. said of the judicial task: "Behind the logical form lies a judgment as to the relative worth and importance of competing grounds, often an inarticulate and unconscious judgment, it is true, and yet the very root and nerve of the whole proceeding." (Harvard Law Review, Vol. 10, p. 457, 465, 466) This is perhaps the reason why the scalpel of public opinion should not be prevented from probing into the sacred sanctum of judicial activities. As the people have immediate and personal interest in the issues of every case, so, perhaps, we may catch a glimpse of the infinite from the babel of tongues. And if the choice be one of policy or expediency, the judge may find true wisdom from the throbbing pulse of the nation. Truth is so hard to divine that I personally do not care who shows it to me. I believe with Lin Yutang (The Importance of Living) that I should not care where I gather my knowledge or from what sources spring my power.

That public discussion of pending cases may embarrass the administration of justice does not seem to me to be a valid test of contempt. Why should the Court be embarrassed in the first place? The validity of an idea only depends upon its merits and not upon him who conceived it. I would as readily quote from one unknown as I would quote from the most well-known legal savants. And when I quote I shall not feel the force of the source as of the idea. The idea is so far divorced from the person that conceived it; only the idea matters. On coming across a beautiful idea, I say it is also mine. Did not Solomon hundreds of years ago say there is nothing new under the sun? And when someone should happen to say something that should sway my opinion, I should thank him and not punish him for contempt. I believe that a foolish sense of independence is the "hobgoblin of little minds."

I like this one particular passage from Emerson: "It is easy in the world to live after the world's opinion; it is easy in solitude to live after our own; but the great man is he who in the midst of the crowd keeps with perfect sweetness the independence of solitude." Perhaps, only men with such greatness should occupy judicial positions and dedicate themselves to passing judgments upon their fellow men. Against such men, embarrassment can certainly not be a rule to test the power of contempt. Judges should be men who are capable of standing against hostile cross-currents of opinion; who should learn to fondle an idea for its worth, as if universal existence depends upon it; who should be so far superior as not to blush that someone else suggested an idea or agreed with them. If the Supreme Court of the United States had this in mind, I think it expressed a rule of law best calculated to insure advancement in legal thought. I delight that the United States Supreme Court laid down the rule in cases where the judges concerned were elected.

We feel the elation of pride that our Supreme Court should be so far

independent of foreign courts in charting the course of our law. ("Furthermore, in this connection, it may not be out of place to state, that Spanish jurisprudence promulgated after the withdrawal of the Spanish sovereignty in the Philippines, always worthy of consideration by our courts, is no longer binding." Lichauco v. Tan Pho, 51 Phil. 862) We think, however, that we should not discard an excellent idea for the sake of a cramping sense of independence. I feel no diminution of power when I adopt another's idea, because I feel his idea is also mine. And when I arrive at a hard earned thought, I bother not that all my fellow men should differ.

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