

THE DIRECTOR OF PRISONS AND THE EXECUTIVE SECRETARY, PETITIONERS, VS. ANG CHO KIO @ ANG MING HUY AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-30001. June 23, 1970

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

An appeal by certiorari, by the Solicitor General in behalf of the Director of Prisons and the Executive Secretary, from the decision of the Court of Appeals in CA-G. R. No. 39018-R of said Court, entitled "Ang Cho Kio (Ang Ming Huy) Petitioner-Appellee versus The Director of Prisons and the Executive Secretary, Respondents--Appellees." [1] In his petition the Solicitor General prays this Court "to render judgment ordering the striking out from said decision of the portions recommending to the Executive Secretary 'to allow the (petitioner) (respondent Ang Cho Kio @ Ang Ming Huy) to leave this country in the first available transportation abroad but otherwise affirming the dismissal of the petition for habeas corpus, with costs in all instances against respondent Ang Cho Kio @ Ang Ming Huy.'"

The pertinent facts for the purposes of this decision, as shown in the record, are as follows:

Respondent Ang Cho Kio @ Ang Ming Huy had been charged, tried and convicted of various offenses committed in the Philippines and was sentenced to suffer penalties, to wit: a total of forty-five (45) years, ten (10) months and twenty one (21) days of imprisonment, P6,000 indemnity, and P5,000 moral damages, plus life imprisonment and P6,000 indemnity. [2] After serving six and one-half (6) years of his sentence said respondent was granted conditional pardon on July 4, 1959 by the President of the Philippines. The conditional pardon partly reads as follows:

"By virtue of the authority conferred upon me by the Constitution, and upon the recommendation of the Board of Pardons and Parole, the unexecuted portions of the prison terms of prisoner ANG CHO KIO @ KIWA @ PHILIPP ANG @ ANG TIU CHIO @ KE WA @ LUCIO LEE @ GO ONG @ MR. ANG @ GO ANG @ MR. ONG is hereby remitted on condition that he will voluntarily leave the Philippines upon his release and never to return to this country. Should the above-named prisoner refuse to accept said condition, he shall continue serving his sentence and upon the expiration thereof, he shall be deported from the Philippines for being an undesirable alien."

Ang Cho Kio duly accepted the conditions of his pardon and actually left the Philippines for Taipei, Nationalist China, on July 28, 1959.

In the evening of June 26, 1966 Ang Cho Kio arrived at the Manila International Airport on a Philippine Air Lines plane from Taipei, travelling under the name "Ang Ming Huy". He held a round-trip ticket from Taipei to Honolulu, to San Francisco, to Los Angeles, to Chicago, to Washington D.C. to New York, to Vancouver, to Tokyo, to Seoul, to Osaka, to Taipei to Bangkok, to Saigon, to Hongkong and back to Taipei. He was booked on Philippine Air Lines earliest connecting flight to Honolulu on June 29, 1966 at 6:30 p.m., or with a stop-over of

about 72 hours in Manila. He sur-rendered his passport to the immigration authorities at the Manila International Airport, and was issued a note that his departure was scheduled for June 29, 1966 at 6:30 p.m. He left his luggage at the airport and was issued claim tags. He registered for a three-day stay at the El Presidente Hotel at Parañaque, Rizal. He contacted his two friends in Manila, Lim Pin and Go Bon Kim. These two friends invited him to stay longer in the Philippines. On June 28, 1966 he and his two friends went to the Bureau of Immigration, where his friend Lim Pin signed a letter addressed to the Commissioner of Immigration requesting for a fourteen-day extension of stay in the Philippines for him. Ang Cho Kio was identified by inspector Mariano Cristi of the Immigration Bureau as the Ang Cho Kio who was deported to Taipeh on July 28, 1959. His identity having been established, Ang Cho Kio was arrested, and the immigration authorities conducted an investigation regarding his presence in the Philippines. The immigration authorities did not allow him to proceed with his trip to Honolulu. On July 5, 1966 the Executive Secretary, by authority of the President, ordered him recommitted to prison to serve the unexpired portion of the sentence that were imposed on him, for having violated the condition of his pardon. The supplemental order of recommitment reads as follows:[3]

"TO THE DIRECTOR OF PRISONS

MUNTINLUPA, RIZAL

"WHEREAS, ANG CHO KIO @ KIWA & PHILIPP ANG @ ANG TIU CHIO @ KI WA @ LUCIO DEE @ GO ONG @ MR. ANG @ GO ANG @ MR. ONG was granted conditional pardon by the President of the Philippines on July 4, 1959, upon the condition that he will voluntarily leave the Philippines upon his release and never to return to this country; and

"WHEREAS, said ANG CHO KIO has violated the condition of his pardon in that on June 26, 1966, he returned to this country from Taipei and gained entry under an assumed name, ANG MING HUY, failed to leave on the first available connecting flight to Honolulu, his alleged destination; instead requested a fourteen day extension of his 72-hour transient stop-over; and had in December 1965 applied for a temporary visitor's visa to Manila also under his assumed name, ANG MING HUY;

"NOW, THEREFORE, by virtue of the authority conferred upon the President of the Philippines by Section 64(i) of the Revised Administrative Code, you are hereby ordered to recommit to prison said ANG CHO KIO @ KIWA @ PHILIPP ANG @ ANG TIU CHIO @ KI WA @ LUCIO DEE @ GO ONG @ MR. ANG @ GO ANG @ MR. ONG @ ANG MING HUY to serve the unexpired portion of the sentences for which he was originally committed to prison, and upon expiration thereof, to deliver said person to the custody of the Commissioner of Immigration for immediate deportation for being an undesirable alien.

"Manila, July 5, 1966.

By Authority of the President:

(Sgd.) RAFAEL M. SALAS

Executive Secretary

RS/ara"

Ang Cho Kio filed with the Executive Secretary a motion, dated August 29, 1966, for the reconsideration of the supplemental order of recommitment. The Executive Secretary failed to act on the motion for reconsideration, and so on October 5, 1966 Ang Cho Kio filed a petition for a writ of habeas corpus with the Court of First Instance of Rizal (Pasay Branch), making as respondents in said petition the Director of Prisons and the Executive Secretary. Under date of October 10, 1966, the officer-in-charge of the Bureau of Prisons filed his return. Under date of October 17, 1966, the Solicitor General filed a return for the Director of Prisons and the Executive Secretary.

After due hearing the Court of First Instance of Rizal, on January 31, 1967, rendered a decision dis-missing the petition for habeas corpus. The Court of First Instance of Rizal held that Ang Cho Kio @ Ang Ming Huy was validly recommitted to prison by the Pre-sident of the Philippines in the exercise of his pre-rogatives pursuant to the provisions of Section 64(i) of the Revised Administrative Code.

Ang Cho Kio appealed to the Court of Appeals from the decision of the Court of First Instance of Rizal. In the decision of a special division of five justices, with three justices concurring, and two justices concurring and dissenting, the Court of Appeals rendered a decision which in effect affirmed the decision of the Court of First Instance of Rizal dismissing Ang Cho Kio's petition for habeas corpus.

We read the following in the majority opinion:

"It having been settled that Sec-tion 64(i) of the Revised Administrative Code is still in force, and that the respondent Executive Secretary, in the name and by authority of the President, exercised the power of recommitment here-in under the provisions of said Code, and not under Art. 159 of the Revised Penal Code, it becomes apparent that any discussion regarding failure to file the corresponding indictment and the presence or absence of criminal intent, will be off-tangent. On the contrary, the issue, in this connection, is whether the courts of justice may interfere in the exercise by the President, thru his Executive Sec-retary, of his administrative power of recommitment. Again, it is settled jurisprudence that the Chief Executive may determine, alone and by himself, whether the condition attached to a pardon given by him has been violated; and in the exer-cise of this prerogative, the courts may not interfere, however erroneous the find-ings may be (Espuelas v. The Provincial Warden, supra; Tesoro v. Director of Prisons, 68 Phil. 154)."

The aforequoted portion of the majority opinion affirms the reasons of the Court of First Instance of Rizal in dismissing the petition for habeas corpus. However, the majority opinion contains the recommenda-tion that Ang Cho Kio

".... be sent out at once from this country and that he be allowed to leave Muntinlupa Prisons under guard only when he has been booked for outward flight at the Manila International Airport so as to avoid the possibility of any further viola-tion of his conditional pardon. At any rate it would be to the best interest of the security and peace of this country to have the petitioner expatriated from the Philippines, instead of being recommitted for a long duration of time to prison where his presence may constitute a constant menace to our country's welfare and bring about some sinister influence among the people with whom he will associate or come in contact."

Then the dispositive portion of the majority opinion reads as follows:

"FOR ALL OF THE FOREGOING REASONS, the petition herein filed is hereby dismissed, with costs against the peti-tioner, and with a reiteration of the recommendation to allow the petitioner to leave this country in the first available transportation abroad made in the course of this decision. Let a copy of this decision be furnished the Executive Secretary."

The concurring and dissenting opinion of the two justices opens with the following statement:

"We concur with the majority opinion insofar as the dismissal of the petition for writ of habeas corpus of petitioner-appellant Ang Cho Kio is concerned, for such dismissal, in effect, is equivalent to an affirmance of the appealed decision. However, we beg to dissent from that por-tion of the majority opinion recommending that said petitioner-appellant be allowed to leave this country by the first avail-able transportation."

In due time the Solicitor General filed with the Court of Appeals a motion for reconsideration, praying for the deletion from the majority opinion of the recom-mendation to allow Ang Cho Kio to leave the country on the first available transportation abroad. The Court of Appeals, by a vote of three to two in the special division which decided the case, denied the motion. Hence this appeal by certiorari by the Solicitor General to this Court.

It is now contended by the Solicitor General that the majority of the special division of five justices of the Court of Appeals erred in making a recommendation to allow respondent Ang Cho Kio to leave this country on the first available transportation abroad. The Solicitor General maintains that the recommendation is not a part of the decision binding upon the parties, and is uncalled for; that it gives the decision a political complexion, because courts are not empowered to make such a recommendation, nor is it inherent or incidental in the exercise of judicial powers; that there is no law which gives the court the authority to recommend to the President the voluntary departure of an undesirable alien who is lawfully committed to jail; that the deportation of aliens sentenced by the courts for violation of the laws of the land, and even the act of merely allowing such convicted aliens to voluntarily leave the country, is an act of state exercised solely in the discretion of the Chief Executive. It is urged by the Solicitor General that the act of sending an undesirable alien out of the country is political in character, and the courts should not interfere with, nor attempt to influence, the political acts of the Chief Executive.

In a motion dated April 7, 1969, Ang Cho Kio manifested that he waived his right to file an answer to any brief filed by the Solicitor General.[4]

We agree with the Solicitor General. The case before the Court of Appeals was for habeas corpus. The only question to be resolved by the Court of Appeals was whether, or not, the Court of First Instance of Rizal, had rightly dismissed the petition of Ang Cho Kio for habeas corpus. The Court of Appeals was not called upon to review any sentence imposed upon Ang Cho Kio. The sentence against him had long become final, and, in fact, he had served part of the sentence when he was extended pardon on July 4, 1959, upon the condition that he should leave the country, never to return. The opinion of the three justices of the special division of the Court of Appeals, to which the two other justices have concurred, found that the recommitment to prison of Ang Cho Kio was done in the exercise by the President of the Philippines of his power pursuant to the provision of Section 64(i) of the Revised Administrative Code, and the courts should not interfere with the exercise of that power. The majority opinion should have been limited to the affirmance of the decision of the lower court, and no more.

The recommendatory power of the courts in this jurisdiction are limited to those expressly provided in the law - and such law is the provision of Section 5 of the Revised Penal Code, as follows:

"Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

"In the same way the court shall submit to the Chief Executive, through the Department of Justice such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense."

Certainly, the recommendation in the majority opinion of the special division of the Court of Appeals, now in question, is not authorized under the aforequoted provision of Article 5 of the Revised Penal Code. The Court of Appeals was not called upon to review any sentence that was imposed on Ang Cho Kio. It was simply called upon to determine whether Ang Cho Kio was illegally confined, or not, in the insular penitentiary under the Director of Prisons. We do not consider it proper that the majority of the justices in the special division make a recommendation that would suggest a modification or a correction of the act of the Chief Executive, after the same justices have said in their opinion "that the Chief Executive may determine, alone and by himself, whether the condition attached to a pardon given by him had been violated; and in the exercise of this prerogative, the courts may not interfere, however erroneous the findings may be." When the Chief Executive, exercising his

powers pursuant to Section 64(i) of the Re-vised Administrative Code, ordered Ang Cho Kio recommit-
ted to prison, it is assumed that the Chief Executive had decided that Ang Cho Kio should be dealt with that way under
the circumstances. For the court to suggest to the Chief Executive to modify his decision to recom-mit Ang Cho
Kio to prison by allowing him to leave the country instead is indeed to interfere with the functions of the Chief
Executive. It would be, as urged by the Solicitor General, an interference on, or an attempt to influence, the
exercise by the Chief Executive of the political powers of his office. The matter of whether an alien who violated
the laws in this country may remain or be deported is a political question that should be left entirely to the Chief
Executive to de-cide. Under the principle of separation of powers, it is not within the province of the judiciary to
express an opinion, or express a suggestion, that would reflect on the wisdom or propriety of the action of the
Chief Executive on matters purely political in nature.

It may be said that the recommendation embodied in the majority opinion of the special division of the Court of
Appeals simply represents the private opinion of the three justices, and judges should be left free to express even
their private opinions in judicial decisions. We believe, however, that the better practice should be that the
decision of a court should contain only opinion that is relevant to the question that is before the court for decision.
After all, courts are not concerned with the wisdom or mora-lity of laws, but only in the interpretation and
appli-cation of the law. We believe that judges should refrain from expressing irrelevant opinions in their
decisions which may only reflect unfavorably upon their competence and the propriety of their judicial actuations.

However, of the ten members of the Court, as presently constituted, only five are of the opinion that the
recommendation embodied in the decision of the majority of the special division of the Court of Appeals, now in
question, should be deleted from the decision.[5] Two members of the Court are of a dif-ferent opinion[6], and
three others did not take part in the decision because of their official actuations relative to the case of respondent
Ang Cho Kio before it reached this Court.[7] There is, therefore, one vote less than the majority of the Court that
is neces-sary to grant the certiorari prayed for.

WHEREFORE, the petition for writ of certiorari is denied, and the decision of the special division of the Court of
Appeals stands. No costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., and Dizon, JJ., concur.

Fernando, J., concurs fully and in addition submits a brief concurring opinion.

Makalintal, J., dissents in a separate opinion.

Castro, J., concurs fully in the above dissenting opinion of Mr. Justice Makalintal.

Teehankee, Barredo, and Villamor, JJ., did not take part.

[1] Decision of a Special Division of five Justices of the Court of Appeals; Villamor, Pres. J., Rodriguez and
Cañizares, JJ. concurring; Nolasco and Mojica, JJ. concurring and dissenting.

[2] He had been prosecuted for murder, frustrated murder, frustrated homicide, grave coercion with murder,
illegal possession of explosives and ammunitions, grave coercion and illegal possession of firearm. (Brief,
Solicitor General in the Court of Appeals, p. 1 and 10). (page 22 of the rollo)

[3] Appellant's Brief in the Court of Appeals, pp. 3--4 (page 21 of the rollo).

[4] Page 57 of the rollo.

[5] Chief Justice Concepcion and Justices Reyes, Dizon, Zaldivar and Fernando.

[6] Justices Makalintal and Castro.

[7] Justice Teehankee, as Secretary of Justice, recommended to the President the recommitment to prison of Ang Cho Kio; Justice Barredo, as Solicitor General, appeared for the Executive Secretary and the Director of Prisons in the Court of Appeals; and Justice Villamor was one of the three justices that rendered the majority opinion of the special division of the Court of Appeals.

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CONCURRING OPINION

FERNANDO, J.:

The opinion of the Court penned by Justice Zaldivar, both thorough and meticulous, is, to my mind, equally noteworthy for expressing with clarity and precision the governing principle that should govern the discharge of judicial functions. It has my full concurrence therefore. I would like, however, to add a few words to the subject in view of the significance attached to a matter so fundamental in character.

The basic premise, of course, is the decisive weight to be accorded the fundamental postulate of separation of powers. While the failure of the majority opinion of the respondent Court of Appeals to yield full obeisance to its implications insofar as the executive is concerned is brought to light in the opinion of Justice Zaldivar, I would on my part view it further as an unwarranted assumption by the judiciary of a role which under the Constitution is denied it. To be more precise, it is not for any occupant of any court to play the role of adviser to the Executive.

I entertain serious fears that if the rule were otherwise not only would there be an infringement of the separation of powers concept but the delicate and grave duty of the courts to assure compliance with constitutional mandates and maintain its supremacy as called for by the rule of law would be gravely endangered. Such a point of view I once had occasion to manifest in a concurring opinion. Thus: "For to go back to the concept of the rule of law, in the same way that the legislative and the executive branches are required to act strictly within the bounds of their competence, the judiciary, including this Court, is likewise restricted to its proper domain. The fact that on questions of law it has the final say makes it all the more imperative that in passing upon the question of whether or not it is called upon to act, it takes the utmost care that in assuring compliance with constitutional limitations, it does not, at the same time, ignore the limits of its own authority." [1]

What was said by Justice Malcolm, speaking for this Court in a 1932 opinion, comes to mind. [2] Time has not impaired its validity; it has but served to confirm it. Thus: "The Supreme Court of the Philippine Islands represents one of the three divisions of power in our government. It is judicial power and judicial power only which is exercised by the Supreme Court. Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of the government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act. The Supreme Court and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administering of judicial functions." [3]

In support of the above view, Justice Malcolm made reference to the last opinion of Chief Justice Taney of the United States Supreme Court. This is the excerpt referred to: "Its jurisdiction and powers and duties being defined in the organic law of the government, and being all strictly judicial, Congress cannot require or authorize the court to exercise any other jurisdiction or power, or perform any other duty. * * * And while it executes firmly all the judicial powers entrusted to it, the court will carefully abstain from exercising any power that is not strictly

judicial in its character, and which is not clearly confided to it by the Constitution. * * * "[4]

There is likewise the epochal opinion of Justice Cardozo, as Chief Judge of the New York Court of Appeals,[5] when that Court nullified a section of a New York statute that would vest in a justice of its Supreme Court the power to investigate at the instance of its governor. His opinion explained why: "He is made the delegate of the Governor in aid of an executive act, the removal of a public officer. * * * At the word of command he is to give over the work of judging, and set himself to other work, the work of probing and advising. His findings when made will have none of the authority of a judgment. To borrow Bacon's phrase, they will not 'give the rule or sentence.' They will not be preliminary or ancillary to any rule or sentence to be pronounced by the judiciary in any of its branches. They will be mere advice to the Governor, who may adopt them, or modify them, or reject them altogether. From the beginnings of our history, the principle has been enforced that there is no inherent power in Executive or Legislature to charge the judiciary with administrative functions except when reasonably incidental to the fulfillment of judicial duties. * * * The exigencies of government have made it necessary to relax a merely doctrinaire adherence to a principle so flexible and practical, so largely a matter of sensible approximation, as that of the separation of powers. 'Elasticity has' not meant that what is of the essence of the judicial function may be destroyed by turning the power to decide into a pallid opportunity to consult and recommend * * *."

Such a principle in American law, Justice Cardozo could trace back to Hayburn's Case,[6] a 1792 decision. He made mention of another authoritative precedent, this too coming from the pen of Chief Justice Taney in 1851, in *United States v. Ferreira*.^[7] A provision of the Treaty of 1819 by virtue of which Florida was ceded by Spain to the United States was to the effect that it was incumbent on the latter to satisfy claims for injury by Spaniards whether in the armed forces or civilians due to the operations of the American army in Florida. In 1823 Congress passed an act to carry into execution this article of the Treaty. It was therein authorized for the judges of the superior courts established at St. Augustine and Pensacola, Florida, respectively, to receive and adjust all claims arising within their respective jurisdictions, agreeably to the above article of the Treaty. Decisions favorable to claimants were to be reported by such judges to the Secretary of the Treasury, "who, on being satisfied that the same is just and equitable, within the provisions of the Treaty, shall pay the amount thereof to the person or persons in whose favor the said is adjudged."

According to Chief Justice Taney: "It is too evident for argument on the subject, that such a tribunal is not a judicial one, and that the Act of Congress did not intend to make it one. The authority conferred on the respective judges was nothing more than that of a commissioner to adjust certain claims against the United States; and the office of judges, and their respective jurisdiction, are referred to in the law, merely as a designation of the persons to whom the authority is confided, and the territorial limits to which it extends. The decision is not the judgment of a court of justice. It is the award of a commissioner. The Act of 1834 calls it an award. And an appeal to this court from such a decision, by such an authority from the judgment of a court of record, would be an anomaly in the history of jurisprudence."

Nor was this the first time in the New York bench that Justice Cardozo, speaking for the Court, made such a pronouncement.^[8] In holding not legally allowable the reference to the New York Court of Appeals by the Industrial Commission of New York, the question of whether or not it was authorized to require payment into the state fund of certain unpaid death benefits, the distinguished jurist declared: "In that situation our duty is not doubtful. The function of the courts is to determine controversies between litigants. * * * They do not give advisory opinions. The giving of such opinions is not the exercise of the judicial function. * * * It is true that in England the custom of the Constitution makes the judges of the high court the assistants of the Lords, and requires them, upon the demand of the Lords, to give 'consultative' opinions. But that custom is a survival of the days

when the judges were members of the great council of the realm. In the United States no such duty attaches to the judicial office in the absence of express provision of the Constitution."

There could be no disputing the accuracy of the observation made by Justice Cardozo in the Richardson opinion as to the fatal infirmity that would infect the role of a judge as a counselor of the Executive in these words: "Centuries of common law tradition warn us with echoing impressiveness that this is not a judge's work." In that sense we are as one with the common-law although we cannot trace it that far back. Failure to adhere to it gives rise to a grave concern.

Moreover, I would assume that those of us entrusted with judicial responsibility could not be unaware that we may be laying ourselves open to the charge of presumptuousness. Considering that the exercise of judicial authority does not embrace the alien role of a presidential adviser, an indictment of officiousness may be hard to repel. It is infinitely worse if the advice thus gratuitously offered is ignored or disregarded. The loss of judicial prestige may be incalculable. Thereafter, there may be less than full respect for court decisions. It would impair the confidence in its ability to live up to its trust not only on the part of immediate parties to the litigation but of the general public as well. Even if the teaching of decided cases both here and in the Philippines is not as clear therefore, there should be, to say the least, the utmost reluctance on the part of any court to arrogate for itself such a prerogative, the exercise of which is fraught with possibilities of such undesirable character.

When it is borne in mind that no undue attention need be paid to such advice, which may prove to be ineffectual, even futile, with consequences far-from-flattering to the judiciary, the language of the then Professor Frankfurter used with reference to advisory opinions, although set in a different context, would not be inappropriate. They are "ghosts that slay."^[9] There is no place for them in the law, not if respect be paid to a coordinate branch, the Executive, and if, to my mind a more important consideration, there be no deviation from what thus far has rightly been conceived to be the fitting and proper role of the judiciary.

[1] *Arula v. Espino*, L-28949, June 23, 1969, 28 SCRA 540, 575.

[2] *Manila Electric Co. v. Pasay Transportation Co.*, 57 Phil. 600, (1932).

[3] *Ibid*, p. 605.

[4] *Ibid*, p. 606 citing *Gordon v. United States*, 2 Wall. 561 (1864).

[5] *In re Richardson*, 160 NE 655 (1928).

[6] 2 Dall. 409.

[7] 13 How. 40. Cf. *Gordon v. United States*, 117 US 697 (1865); *Matter of Sanborn*, 148 US 222 (1893); *Interstate Commerce Commission v. Brimson*, 154 US 447 (1894); *Muskrat v. United States*, 219 US 346 (1911); *Tutun v. United States*, 270 US 738 (1926); *Liberty Warehouse Co. v. Grannis*, 273 US 70 (1927).

[8] *In re Workmen's Compensation Fund*, 119 NE 1027 (1918).

[9] *A Note on Advisory Opinions*, 37 Harv. Law Review 1002, 1008 (1924).

DISSENTING OPINION

MAKALINTAL, J.:

I dissent from the opinion of my brethren insofar as it orders the deletion of the recommendation of three of the five Justices who constituted the special division of the Court of Appeals which decided this case that the petitioner Ang Cho Kio be allowed "to leave this country by the first available transportation." This recommendation is admittedly not a part of the judgment of the said Court; it was not within the issue presented for its re-solution; and the fact that it was made at all is a non-prejudicial matter which does not rise to the category of reversible error. I would not begrudge the three Justices who made it the liberty to do so, nor consider their act as an undue trespass upon presidential prerogative. What is involved is, to me, no more than a question of taste, or punctilious observance of certain proprieties concerning which well-meaning men may honestly differ; and I am not prepared to say that there has been such a blatant disregard of either as to call for the interposition of this Court's power of review merely for the purpose of ordering the deletion of the matter objected to.

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