

**ESTRELLA TIONGCO YARED (NOW DECEASED) SUBSTITUTED BY
ONE OF HER HEIRS, CARMEN MATILDE M. TIONGCO, PETITIONER,
VS. HON. RICARDO M. ILARDE, PRESIDING JUDGE, REGIONAL TRIAL
COURT O...**

G.R. No. 114732. August 01, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for certiorari under Rule 65 assailing the Order dated March 17, 1994[1] of the Regional Trial Court of Iloilo City, Branch 26, which reinstated an earlier order cancelling the notice of lis pendens annotated on the back of Transfer Certificates of Title Nos. T-92383 and T-5050, of the Registry of Deeds of Iloilo City covering Lots 3244 and 3246, respectively, located in Iloilo City.

The relevant facts are summarized as follows:

On October 17, 1990, petitioner Estrella Tiongco Yared filed an amended complaint[2] before the Regional Trial Court, 6th Judicial Region, Branch XXVI, against private respondents Jose B. Tiongco and Antonio Doronila, Jr. Docketed as Civil Case No. 19408, the action was one for "annulment of affidavit of adjudication, sales, transfer certificates of title, reconveyance and damages."

In brief, the amended complaint alleged that respondent Tiongco, on the basis of an affidavit of adjudication dated April 17, 1974 alleging that he is the sole surviving heir of the previous owner, Maria Luis de Tiongco, succeeded in having the subject properties registered in his name, to the prejudice of the other surviving heir of the previous owner, petitioner among them. Petitioner and respondent Tiongco's father were siblings, and both were among several heirs of Maria Luis de Tiongco. The aforesaid affidavit of adjudication was registered with the Office of the Register of Deeds of Iloilo City on May 10, 1974. Petitioner prayed that the properties be reconveyed to the original registered owners, subject to partition among the lawful heirs, and that respondent Tiongco be ordered to pay damages and costs.

To protect her interest in the properties during the pendency of the case, petitioner caused to be annotated on Transfer Certificate of Title Nos. T-52547, T-4666 and T-52546,[3] which covered Lot Nos. 3244, 3246 and 1404, respectively. TCT Nos. T-92383 and T-5050 were derived or transferred from TCT Nos. T-52547 and T-4666 respectively and registered in the name of Tiongco.

After respondent Jose B. Tiongco filed his answer, trial ensued during which, on three separate occasions, he filed motions seeking the cancellation of the notices of lis pendens.[4] All these motions were denied.[5]

On December 14, 1993, the respondent judge issued a Decision[6] dismissing petitioner's complaint and private respondent's counterclaim. The trial court found that petitioner's cause of action had already prescribed.

Petitioner filed a notice of appeal[7] on December 17, 1993. As before, respondent Tiongco filed a motion for

cancellation of the notices of lis pendens[8] dated December 21, 1993; this was denied in an Order dated January 10, 1994.[9] He filed a "Second Motion for Reconsideration"[10] which was also denied in an Order dated January 26, 1994.[11] Displaying remarkable tenacity, respondent Tiongco filed a "Third Motion for Reconsideration." [12] This time, however, his arguments proved persuasive. In an Order[13] dated February 14, 1994, the respondent judge ruled to wit:

In the light of the ruling laid down in *Magdalena Homeowners Association Inc. vs. Court of Appeals*, 184 SCRA 325; 330 (1990), cited in *Vda. De Kilayko vs. Tengco*, 207 SCRA 600; 614-615 (1992), that "the continuance or removal of a notice of lis pendens is not contingent on the existence of a final judgment in the action and ordinarily has no effect on the merits thereof" so that the notices of lis pendens in the case at bar may, on proper grounds, be cancelled notwithstanding the non-finality of the judgment of this Court brought about by plaintiff's appeal and considering the finding of this Court that plaintiff's action had already prescribed, which finding is based on the admitted fact that the questioned deed of adjudication was registered way back of May 10, 1974 so that the possibility of this finding being reversed is quite remote if not totally nil and, considering further, the circumstances obtaining in this case, among which are: (1) that the criminal complaint for perjury filed by plaintiff against defendant Jose B. Tiongco based on the same deed of adjudication had already been dismissed with finality also on the ground of prescription; (2) that the occupants of the property who were alleged as formerly paying rentals to herein plaintiff, Estrella Tiongco Yared, had already recognized defendant's ownership and had long stopped paying rentals to plaintiff without the latter intervening, much less, contesting the decision in Civil Case No. 15421 where defendant Jose B. Tiongco was declared with finality as the true and lawful owner of Lots Nos. 3244 and 3246; and (3) that, if at all, the present claim of plaintiff covers but a very small portion of subject lots consisting only a total of about 64 square meters hence, it would be unfair to the defendant who has torrens title covering the parcels of lands solely in his name to have the same subjected to the harsh effect of such an encumbrance; the Court, in view of all the foregoing considerations and upon further review of the records, hereby reconsiders its stand on the subject matter of lis pendens and so holds that the continued annotation of subject notices of lis pendens is intended to molest the defendant, Jose B. Tiongco, and is not necessary to protect the rights of plaintiff as such rights, if any, are now foreclosed by prescription.

This time, it was petitioner's turn to seek reconsideration.[14] On March 4, 1994, the public respondent issued an Order[15] reversing himself on the ground that (1) it had already lost jurisdiction over the case due to the expiration of the last day to appeal of both parties, (2) the notice of appeal has been approved, and (3) the records had been ordered elevated to the Court of Appeals.

Private respondent Tiongco filed another motion for reconsideration[16] against the Order dated March 4, 1994. On March 17, 1994, the respondent judge issued the order, subject of this petition, which is quoted hereunder:

Considering that under Section 9, Rule 41 of the Rules of Court, although appeal had already been perfected, the Court, prior to the transmittal of the records to the appellate court, may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal and considering that in the case at bar, lis pendens is not a matter litigated in the appeal and the records have not as yet been transmitted to the appellate court so that this Court still has jurisdiction to issue the Order of February 14, 1994 cancelling the notices of lis pendens annotated on TCT No. T-92383 covering Lot 3244 and on TCT No. T-5050 covering lot 3246 and considering further, that the said Order does not direct cancellation of lis pendens annotated on TCT No. T-89483 covering Lot no. 1404 which contains a total area of 1,587 square meters where the area of 64 square meters claimed by plaintiff can very well be taken; as prayed for by the defendant Jose B. Tiongco, the Order of March 4, 1994 is hereby reconsidered and set aside and the Order of February 14, 1994 is hereby reconsidered and set aside and the Order of February 14, 1994 cancelling the notices of lis pendens on TCT No. T-92383 covering lot 3244 and on TCT No. T-5050 covering lot 3246 is hereby reinstated.

On April 5, 1994, the Register of Deeds cancelled the annotation of notices of lis pendens.[17]

Feeling that a motion for reconsideration would be fruitless, petitioner filed the instant special civil action for certiorari, alleging that:

THE HONORABLE RESPONDENT JUDGE ACTED CAPRICIOUSLY, WHIMSICALLY AND WITH GRAVE ABUSE OF DISCRETION IN ORDERING THE CANCELLATION OF THE NOTICES OF LIS PENDENS ANNOTATED AT THE BACK OF THE CERTIFICATES OF TITLE THAT ARE THE SUBJECT OF THE CIVIL CASE NO. 19408, AS THESE ARE AMONG THE DOCUMENTS THAT ARE SOUGHT TO BE DECLARED NULL AND VOID BY THE HEREIN PETITIONER.

The doctrine of lis pendens is founded upon reasons of public policy and necessity, the purpose of which is to make known to the whole world that properties in litigation are still within the power of the court until the litigation is terminated and to prevent the defeat of the judgment or decree by subsequent alienation.[18] The notice of lis pendens is an announcement to the whole world that a particular real property is in litigation, and serves as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over said property.[19]

Rule 13, Section 14 of the 1997 Rules of Civil Procedure[20] and Section 76 of Presidential Decree No. 1529,[21] otherwise known as the Property Registration Decree provide the statutory bases for notice of lis pendens. From these provisions, it is clear that such a notice is proper only in:

- a) An action to recover possession of real estate;
- b) An action to quiet title thereto;
- c) An action to remove clouds thereon;
- d) An action for partition; and
- e) Any other proceedings of any kind in Court directly affecting title to the land or the use or occupation thereof or the building thereon.[22]

Thus, all petitioner has to do is to assert a claim of possession or title over the subject property to put the property under the coverage of the rule.[23] It is not necessary for her to prove ownership or interest over the property sought to be affected by lis pendens.

Whether as a matter, of procedure[24] or substance,[25] the rule is that a notice of lis pendens may be cancelled only on two (2) grounds, namely (1) if the annotation was for the purpose of molesting the title of the adverse party, or (2) when the annotation is not necessary to protect the title of the party who caused it to be recorded.[26]

The petition should be dismissed, there being a clear violation of the doctrine of judicial hierarchy that we have taken pains to emphasize in past jurisprudence.

Thus, we ruled in *Vergara v. Suelto*[27] that:

[t]he Supreme Court is a court of last resort, and must so remain if its is to satisfactorily perform the functions assigned to it by fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor. Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another, are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.

We reaffirmed this policy in *People v. Cuaresma*,^[28] thus:

xxx A last word. This Court's original jurisdiction to issue writ of certiorari (as well as prohibition, mandamus, quo warranto, habeas corpus and injunction) is not exclusive. It is shared by this Court with Regional Trial Courts (formerly Courts of First Instance), which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals (formerly Intermediate Appellate Court), although prior to the effectivity of Batas Pambansa Bilang 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction." This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. Indeed, the removal of the restriction on the jurisdiction of the Court of Appeals in this regard, *supra*—resulting from the deletion of the qualifying phrase, "in aid of its appellate jurisdiction"—was evidently intended precisely to relieve this Court pro tanto of the burden of dealing with applications for the extraordinary writs which, but for the expansion of the Appellate Court's corresponding jurisdiction, would have had to be filed with it.

The Court feels the need to reaffirm that policy at this time, and to enjoin strict adherence thereto in the light of what it perceives to be a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometimes even their appeals, passed upon and adjudicated directly and, immediately by the highest tribunal of the land. The proceeding at bar is a case in point. The application for the writ of certiorari sought against a City Court was brought directly to this Court although there is no discernible special and important reason for not presenting it to the Regional Trial Court.

The Court therefore closes this decision with the declaration, for the information and guidance of all concerned, that it will not only continue to enforce the policy, but will require a more strict observance thereof. (emphasis supplied)

Notwithstanding these pronouncements, parties persisted in disregarding the judicial hierarchy. As we noted in *Santiago v. Vasquez*,^[29]

One final observation. We discern in the proceedings in this case a propensity on the part of petitioner, and, for that matter, the same may be said of a number of litigants who initiate recourses before us, to disregard the hierarchy of courts in our judicial system by seeking relief directly from this Court despite the fact that the same is available in the lower courts in the exercise of their original or concurrent jurisdiction, or is even mandated by law to be sought therein. This practice must be stopped, not only because of the imposition upon the precious time of this Court but also because of the inevitable and resultant delay, intended or otherwise, in the adjudication of the case which often has to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues since this Court is not a trier of facts. We, therefore, reiterate the judicial policy that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstance justify availment of a remedy within and calling for the exercise of our primary jurisdiction.

This policy found further application in *People v. Court of Appeals*,^[30] *Aleria v. Velez*,^[31] and *Tano v. Socrates*.^[32] Only the presence of exceptional and compelling reasons justified a disregard of the rule.^[33]

Petitioner has failed to advance a satisfactory explanation as to her failure to comply with or non-observance of the principle of judicial hierarchy. There is no reason why the instant petition could not have been brought before the Court of Appeals, considering all the more that the appeal of the main case was already before it. In *Magdalena, Homeowners Association, Inc. v. Court of Appeals*[34] we ruled, to wit:

The notice of *lis pendens*—i.e., that real property is involved in an action—is ordinarily recorded without the intervention of the court where the action is pending. The notice is but an incident in an action, an extrajudicial one, to be sure. It does not affect the merits thereof. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction are subject to the results of the action, and may well be inferior and subordinate to those which may be finally determined and laid down therein. The cancellation of such a precautionary notice is therefore also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time. And its continuance or removal—like the continuance or removal or removal of a preliminary attachment of injunction is not contingent on the existence of a final judgment in the action, and ordinarily has no effect on the merits thereof.

In the case at bar, the case had properly come within the appellate jurisdiction of the Court of Appeals in virtue of the perfection of the plaintiff's appeal. It therefore had power to deal with and resolve any incident in connection with the action subject of the appeal, even before final judgment. The rule that no questions may be raised for the first time on appeal have reference only to those affecting the merits of the action, and not to mere incidents thereof, e.g., cancellation of notices of *lis pendens*, or, to repeat, the grant or dissolution of provisional remedies. [emphasis supplied]

Had petitioner brought the instant petition before the Court of Appeals, the same could, and would, have been consolidated with the appeal, thereby bringing under the competence of the said court all matters relative to the action, including the incidents thereof.

Prescinding from the foregoing discussion, the disposition of the instant case will be incomplete without a reference to the improper and unethical language employed by respondent Jose B. Tiongco, who is also counsel for private respondents, in his pleadings and motions filed both before us and the court *a quo*. It is his belief that counsel for petitioner, Atty. Marciana Deguma, "a rambunctious wrestler-type female of 52 who does not wear a dress which is not red, and who stampedes into the courtroom like a mad fury and who speaks slang English to conceal her faulty grammar,"[35] is impelled by less than less than noble reasons in serving as counsel for petitioner. Her ulterior motive? "[T]o please and tenderize and sweeten towards her own self the readily available Carmelo M. Tiongco,"[36] a retired police major described by respondent Tiongco as Atty. Deguma's "niño bonito,"[37] an unmarried mestizo with curly hair who lives with plaintiff for being houseless"[38] who rents a place on the subject property sought to be recovered by petitioner. Atty. Deguma, apparently an unmarried maiden of a certain age, is variously described by respondent Tiongco as "a love-crazed female Apache [who] is now ready to skin defendant alive for not being a bastard,"[39] and a "horned spinster and man-hungry virago and female bull of an Amazon who would stop at nothing to molest, harass (sic) and injure defendant - if only to please and attract police-major Carmelo Tiongco Junior - the deeply desired object of her unreciprocated affections - who happens not to miss every chance to laugh at her behind her back."[40] He claims that Atty. Deguma, a lawyer with the Public Attorney's Office, is engaged in a game of one-upmanship with a fellow employee, in that "she happens to be ambitious enough to secretly (that what she thought) plot to put one over her office-mate who simply netted a corporal (if not a private) by aiming at no less than an IMDC major - hoping to catch him by sheer brass and audacity."[41] In so doing, Atty. Deguma is using the PAO as a "marriage bureau for her own benefit.[42] Respondent Tiongco predicts that nothing good will come out of opposing counsel's scheme since, quoting Voltaire, "outside of virtue, there's (sic) no happiness." [43]

Respondent Tiongco has achieved a remarkable feat of character assassination. His verbal darts, albeit entertaining in a fleeting way, are cast with little regard for truth. However, he does nothing more than to obscure the issues, and his reliance on the fool's gold of gossip betrays only a shocking absence of discernment. To this end, it will be wise to give him an object lesson in the elementary rules of courtesy by which we expect members of the bar to comport themselves. These provisions of the Code of Professional Responsibility are pertinent:

CANON 8—A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARD HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL.

Rule 8.01-A lawyer shall not, in his professional dealings, use languages which is abusive, offensive or otherwise improper.

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Rule 11.03-A lawyer shall abstain from scandalous, offensive or menacing language before the courts.

In *Romero v. Valle*,^[44] we stated that a lawyer's actuations, "[a]lthough allowed some latitude of remarks or comment in the furtherance of the cause he upholds, his arguments, both written or oral, should be gracious to both court and opposing counsel and be of such words as may be properly addressed by one gentleman to another." Otherwise, his use of intemperate language invites the disciplinary authority of the court.^[45] We are aghast at the facility with which respondent Atty. Jose B. Tiongco concocts accusations against the opposing party and her counsel, although it is of public record that in *Tiongco v. Deguma, et al.*,^[46] we dismissed as totally unfounded his charge of fraudulent conspiracy and public scandal against petitioner, Major Tiongco, Atty. Deguma and even the latter's superior at the Public Attorney's Office, Atty. Napoleon G. Pagtanac. His lexicon of insults, though entertaining, do not find a ready audience in us, and he should be, as he is hereby, warned accordingly: *Homines qui gestant, quique auscultant crimina, si meo arbitratu liceat, omnis pendeat, gestores linguis, auditores auribus.*^[47]

WHEREFORE, the petition for certiorari is hereby DISMISSED, without pronouncement as to costs.

SO ORDERED.

Mendoza, (Acting Chairman), Quisumbing, and Buena, JJ., concur.
Bellosillo, (Chairman), J., on leave.

[1] Annex "A" of the Petition, Rollo, p. 27.

[2] Annex "B" of the Petition, Rollo, pp. 28-38.

[3] Annex "C" of the Petition, Rollo, pp. 39-40.

[4] Annexes "D," "I" and "Q" of the Petition, Rollo, pp. 41-46, 59-61 and 80, respectively.

[5] Annexes "F," "K," "R" and "T" of the Petition, Rollo, pp. 52, 67, 81-82 and 86, respectively.

[6] Annex "U" of the Petition, Rollo, pp. 87-97.

[7] Annex "V" of the Petition, Rollo, p. 98.

[8] Annex "W" of the Petition, Rollo, pp. 99-101.

[9] Annex “EE” of the Petition, Rollo, pp. 144-146.

[10] Annex “II” of the Petition, Rollo, pp. 150-153.

[11] Annex “JJ” of the Petition, Rollo, p. 156.

[12] Annex “KK” of the Petition, Rollo, pp. 157-165.

[13] Annex “MM” of the Petition, Rollo, pp. 171-172.

[14] Annex “NN” of the Petition, Rollo, pp. 173-182.

[15] Annex “PP” of the Petition, Rollo, p. 185.

[16] Annex “QQ” of the Petition, Rollo, pp. 186-189; also Supplemental Motion for Reconsideration, Annex “RR,” pp. 190-195.

[17] Rollo, pp. 202-205.

[18] *Tan v. Lantin*, 142 SCRA 423, 425 (1986),

[19] *Villanueva v. Court of Appeal*, 281 SCRA 298, 306 (1997); *Yu v. Court of Appeals*, 251 SCRA 509, 513 (1995),

[20] Section 14. Notice of Lis Pendens.- In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.

[21] Sec. 76. Notice of Lis Pendens. - No action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the buildings thereon, and no judgment, and no proceeding to vacate or reverse any judgment, shall have any affect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceeding and the court wherein the same is pending, as well as the date of the institution thereof, together with a reference to the number of the certificate of title, and an adequate description of the land affected and the registered owner thereof, shall have been filed and registered.

[22] *Villanueva v. Court of Appeals*, *supra.* at 307; *Magdalena Homeowners Association, Inc. v. Court of Appeals*, 184 SCRA 325, 330 (1990).

[23] *Villanueva v. Court of Appeals*, *supra.* at 311.

[24] 1997 Rules of Civil Procedure, Rule 13, Section 14.

Notices of Lis Pendens.

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The notice of lis pendens hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded.

[25] PD 1529, Sec. 77.

Cancellation of lis pendens.- Before final judgment, a notice of lis pendens may be cancelled upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be registered. It may also be cancelled by the Register of Deeds upon verified petition of the party who caused the registration thereof.

[26] Lee Tek sheng v. Court of Appeals, 292 SCRA 544, 549 (1998).

[27] 27 156 SCRA 753, 766 (1987).

[28] 172 SCRA 415, 423-424 (1989).

[29] 217 SCRA 633, 651-652 (1993).

[30] 301 SCRA 566, 569-570 (1999).

[31] 298 SCRA 611, 618-619 (1998).

[32] 278 SCRA 154, 172-174 (1997); see also Pearson v. Intermediate Appellate Court, 295 SCRA 27, 42 (1998).

[33] See Fortich v. Corona, 289 SCRA 624 (1998) and Philippine National Bank v. Sayo, 292 SCRA 202 (1998).

[34] 184 SCRA 325, 330-331 (1990).

[35] Rollo, p. 214.

[36] Rollo, pp. 220-221.

[37] Rollo, p. 211.

[38] Rollo, p. 112.

[39] Rollo, p. 43.

[40] Rollo, p. 44.

[41] Rollo, p. 60.

[42] Rollo, p. 48.

[43] Rollo, p. 221.

[44] 147 SCRA 197, 202 (1987), reiterated in People v. Taneo, 284 SCRA 251, 267 (1998).

[45] E. PINEDA, LEGAL AND JUDICIAL ETHICS 92 (1995 ED.), citing Surigao Mineral Reservation Board v. Cloribel, 31 SCRA 1 (1970).

[46] G.R. No. 133619, October 26, 1999.

[47] “You tittle-tattlers, and those who listen to slander, by goodwill shall all be hanged-the former by their tongues, the latter by their ears.”

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