

FELIPE SALCEDO, PETITIONER AND APPELLANT, VS. FRANCISCO HERNANDEZ, RESPONDENT AND APPELLEE. IN RE CONTEMPT PROCEEDINGS AGAINST ATTORNEY VICENTE J. FRANCISCO.

G.R. No. 42992. August 08, 1935

Ponente: DIAZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-42992/>

DIAZ, J.:

In a motion filed in this case, which is pending resolution because the second motion for reconsideration of Attorney Vicente J. Francisco, who represents the herein petitioner, has not been acted upon to date, for the reason that the question whether or not the decision which has already been promulgated should be reconsidered by virtue of the first assignment of error relied upon in said petitioner's brief, has not yet been determined, for which purpose the case was set for hearing on August 5, 1935, said attorney inserted a paragraph the translation of which reads as follows:

"We should like frankly and respectfully to make it of record that the resolution of this court, denying our motion for reconsideration, is absolutely erroneous and constitutes an outrage to the rights of the petitioner Felipe Salcedo and a mockery of the popular will expressed at the polls in the municipality of Tiaong, Tayabas. We wish to exhaust all the means within our power in order that this error may be corrected by the very court which has committed it, because we should not want that some citizen, particularly some voter of the municipality of Tiaong, Tayabas, resort to the press publicly to denounce, as he has a right to do, the judicial outrage of which the herein petitioner has been the victim, and because it is our utmost desire to safeguard the prestige of this honorable court and of each and every member thereof in the eyes of the public. But, at the same time we wish to state sincerely that erroneous decisions like these, which the affected party and his thousands of voters will necessarily consider unjust, increase the proselytes of 'sakdalism' and make the public lose confidence in the administration of justice."

When the court's attention was called to said paragraph, it required Attorney Vicente J. Francisco to show cause, if any, why he should not be found guilty of contempt, giving him a period of ten days for that purpose. In his answer Attorney Vicente J. Francisco, far from regretting having employed the phrases contained in said paragraph in his motion, reiterated them several times contending that they did not constitute contempt because, according to him it is not contempt to tell the truth.

The phrases:

" * * * and constitutes an outrage to the rights of the petitioner Felipe Salcedo and a mockery of the popular will expressed at the polls * * * .

" * * * because we should not want that some citizen, particularly some voter of the municipality of Tiaong, Tayabas, resort to the press publicly to denounce, as he has a right to (Jo, the judicial outrage * * * "

" and * * * we wish to state sincerely that erroneous decisions like these, which the affected party and his thousands of voters will necessarily consider unjust, increase the proselytes of 'sakdalism' and make the public

lose confidence in the administration of justice", disclose, in the opinion of this court, an inexcusable disrespect of the authority of the court and an intentional contempt of its dignity, because the court is thereby charged with no less than having proceeded in utter disregard of the laws, the rights of the parties, and of the untoward consequences, or with having abused its power and mocked and flouted the rights of Attorney Vicente J. Francisco's client, because the acts of outraging and mocking from which the words "outrage" and "mockery" used therein are derived, mean exactly the same as all these, according to the Dictionary of the Spanish Language published by the Spanish Academy (Dictionary of the Spanish Language, 15th ed., pages 132 and 513).

The insertion of the phrases in question in said motion of Attorney Vicente J. Francisco, for many years a member of the Philippine bar, was neither justified nor in the least necessary, because in order to call the attention of the court in a special way to the essential points relied upon in his argument and to emphasize the force thereof, the many reasons stated in his said motion were sufficient and the phrases in question were superfluous. In order to appeal to reason and justice, it is highly improper and amiss to make trouble and resort to threats, as Attorney Vicente J. Francisco has done, because both means are annoying and good practice can never sanction them by reason of their natural tendency to disturb and hinder the free exercise of a serene and impartial judgment, particularly in judicial matters, in the consideration of questions submitted for resolution.

There is no question that said paragraph of Attorney Vicente J. Francisco's motion contains a more or less veiled threat to the court because it is insinuated therein, after the author shows the course which the voters of Tiaong should follow in case he fails in his attempt, that they will resort to the press for the purpose of denouncing, what he claims to be a judicial outrage of which his client has been the victim; and because he states in a threatening manner with the intention of predisposing the mind of the reader against the court, thus creating an atmosphere of prejudices against it in order to make it odious in the public eye, that decisions of the nature of that referred to in his motion promote distrust in the administration of justice and increase the proselytes of sakdalfem, a movement with seditious and revolutionary tendencies the activities of which, as is of public knowledge, occurred in this country a few days ago. This cannot mean otherwise than contempt of the dignity of the court and disrespect of the authority thereof on the part of Attorney Vicente J. Francisco, because he presumes that the court is so devoid of the sense of justice that, if he did not resort to intimidation, it would maintain its error notwithstanding the fact that it may be proven, with good reasons, that it has acted erroneously.

As a member of the bar and an officer of this court, Attorney Vicente J. Francisco, as any attorney, is in duty bound to uphold its dignity and authority and to defend its integrity, not only because it has conferred upon him the high privilege, not a right (Malcolm, Legal Ethics, 158 and 160), of being what he now is: a priest of justice (In re Thatcher, 80 Ohio St. Rep., 492, 669), but also because in so doing, he neither creates nor promotes distrust in the administration of justice, and prevents anybody from harboring and encouraging discontent which, in many cases, is the source of disorder, thus undermining the foundation upon which rests that bulwark called judicial power to which those who are aggrieved turn for protection and relief.

It is right and plausible that an attorney, in defending the cause and rights of his client, should do so with all the fervor and energy of which he is capable, but it is not, and never will be so for him to exercise said right by resorting to intimidation or proceeding without the propriety and respect which the dignity of the courts require. The reason for this is that respect of the courts guarantees the stability of their institution. Without such guaranty, said institution would be resting on a very shaky foundation.

At this juncture, it is not amiss to invite attention to the provisions of rule 1 of Chapter 2 of Legal Ethics, which reads as follows:

"It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the

temporary incumbent of the judicial office, but for the maintenance of its importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases but not otherwise, such charges should be encouraged and the person making them should be protected."

In his defense, Attorney Vicente J. Francisco states that it was not his intention to offend the court or to be recreant to the respect thereto but, unfortunately, there are his phrases which need no further comment. Furthermore, it is a well settled rule in all places where the same conditions and practice as those in this jurisdiction obtain, that want of intention is no excuse from liability (13 C. J., 45). Neither is the fact that the phrases employed are justified by the facts a valid defense:

"Where the matter is abusive or insulting, evidence that the language used was justified by the facts is not admissible as a defense. Respect for the judicial office, should always be observed and enforced." (In re Stewart, 118 La., 827; 43 S., 455.) Said lack or want of intention constitutes at most an extenuation of liability in this case, taking into consideration Attorney Vicente J. Francisco's state of mind, according to him when he prepared said motion. This court is disposed to make such concession. However, in order to avoid a recurrence thereof and to prevent others, by following the bad example, from taking the same course, this court considers it imperative to treat the case of said attorney with the justice it deserves;

Briefly, this court is of the opinion and so holds that the act committed by Attorney Vicente J. Francisco constitutes a contempt in the face of the court (in facie curias) and, reiterating what this court said on another occasion that the power to punish for contempt is inherent in the courts in order that there be due administration of justice (In re Kelly, 35 Phil., 944), and so that the institution of the courts of justice may be stable and said courts may not fail in their mission, said attorney is ordered to pay a fine of P200 within the period of ten days, and to be reprimanded, and he is hereby reprimanded; and it is ordered that the entire paragraph of his motion containing the phrases which as has been stated, constitute contempt of court be stricken from the record de oficio. So ordered.

Avanceña, C.J., Villa-Real, Abad Santos, Hull, Imperial, Butte, and Goddard, JJ., concur.

DISSENTING

MALCOLM, J., with whom concurs

VICKERS, J.,

From 1918 when in the case of the United States vs. Bustos (37 Phil., 731), it was declared that "The guaranties of a free speech and a free press include the right to criticize judicial conduct", until the present, I have consistently and steadfastly stood for the fullest expression of freedom of speech. I stand for the application of that basic principle now.

The language which the majority of the court finds contemptuous and punishes as such is found in a second motion of reconsideration in an election case, a class of cases out of which arise more bitter feelings than any other. The motion is phrased in vigorous language, in fact vigorous and convincing enough to induce the granting of a rehearing on the merits. It is hardly necessary to add that that action was taken entirely uninfluenced by the peroration of the motion here judicially penalized.

Following microscopic examination in the majority opinion of the paragraph, attention is directed to words which prophesy the loss of public confidence in the courts and the growth of SakdaMsm, If, however, the passage

flowing from the pen of Mr. Francisco be set side by side with passages written by the late Mr. Justice Johnson in the case of *Garchitorena vs. Crescini and Imperial* ([1918], 39 PhilJ 258), little difference in phraseology will be noted. One came from a lawyer and is condemned; the other came from a judge and is accepted.

The main burden of the charge is that threats against this court were made by the respondent. Admittedly a lawyer should maintain a respectful attitude towards the courts. Any attempt on the part of a lawyer to influence the action of the court by intimidation will justify not alone punishment for contempt but also disbarment. But does anyone believe that the action taken in this case has been obtained by coercion or could be obtained by such methods? Judges are of sterner stuff than weak plants which bend with every wind.

The lawyer possesses the privilege of standing up for his rights even in the face of a hostile court. He owes entire devotion to the interests of his client. His zeal when a case is lost, which he thinks should have been won, may induce intemperate outbursts. Courts will do well charitably to overlook professional improprieties of the moment induced by chagrin at losing a case.

So that it may not be assumed that the position taken by me is isolated or peculiar, permit me to offer a few corroborative authorities.

Mr. Chief Justice Sharswood of the Supreme Court of Pennsylvania was the pioneer authority in the subject of professional ethics. Speaking for the court in one case, he said: "No class of the community ought to be allowed freer scope in the expression or publication of opinions as to the capacity, impartiality or integrity of > judges than members of the bar. * * * To say that an attorney can only act or speak on this subject under liability to be called to account and to be deprived of his profession and livelihood by the very judge or judges whom he may consider it his duty to attack and expose, is a position too monstrous to be entertained for a moment under our present system." (Ex parte Steinman [1880], 40 Am. Rep., 637.)

Mr. Justice Brewer was first a member of the Supreme Court of Kansas and subsequently was elevated to the Supreme Court of the United States. In the former capacity, in sustaining a contempt of court, he nevertheless observed: "We remark again, that a judge will generally and wisely pass unnoticed any^mere hasty and unguarded expression of passion, or at least pass it with simply a reproof. It is so that, in every case where a judge decides for one party, he decides against another; and oftentimes both parties are beforehand equally confident and sanguine. -The disappointment, therefore, is great, and it is not in human nature that there should be other than bitter feeling, which often reaches to the judge as the cause of the supposed wrong. A judge, therefore, ought to be patient, and tolerate every thing which appears but the momentary outbreak of disappointment. A second thought will generally make a party ashamed of such outbreak, and the dignity of the court will suffer none by passing it in silence." (In re Pryor [1877], 26 Am. Rep., 747.)

The late Mr. Justice Holmes of the Supreme Court of the United States was until recently the leader of progressive thought in American jurisprudence. In a dissenting opinion in a famous case, he said: "When it is considered how contrary it is to our practice and ways of thinking for the same person to be accuser and sole judge in a matter which, if he be sensitive, may involve strong personal feeling I should expect the power to be limited by the necessities of the case 'to insure order and decorum in their presence'. * * * I confess that I cannot find in all this or in the evidence in the case anything that would have affected a mind of reasonable fortitude, and still less can I find there anything that obstructed the administration of justice in any sense that I possibly can give to those words." (*Toledo Newspaper Co. vs. United States* [1917], 247 U. S., 402.)

In 1922 Attorney Feliciano Gomez was charged with having said in effect that the Supreme Court had decided the election protest in favor of Cailles because Governor-General Wood, out of friendship for Cailles, had invited members of the court to Malacaiiang previous to formulating this decision, and there, following a secret

conference, had offered them a banquet. The proceedings for contempt initiated against the respondent by the Attorney-General were halted by the court. In the opinion it was said: "We doubt very much if any one would think for a moment that members of the Supreme Court of the Philippine Islands would sell their birthright of judicial integrity for a social courtesy and the favor of the Chief Executive. * * * We feel also, that litigants and lawyers should not be held to too strict an account for words said in the heat of the moment, because of chagrin at losing cases, and that the big way is for the court to condone even contemptuous language." (In re Gomez [1922], 43 Phil., 376.)

To punish for direct contempt of the Supreme Court is a jurisdiction to be exercised with scrupulous care. The members of the court sit as prosecutors and as judges. Human sensitiveness to an attorney's unjust aspersions on judicial character may induce too drastic action. It may result in the long run in making of lawyers weak exponents of their clients' causes. Respect for the courts can better be obtained by following a calm and impartial course from the bench than by an attempt to compel respect for the judiciary by chastising a lawyer for a too vigorous or injudicious exposition of his side of a case. The Philippines needs lawyers of independent thought and courageous bearing, jealous of the interests of their clients and unafraid of any court, high or low, and the courts will do well tolerantly to overlook occasional intemperate language soon to be regretted by the lawyer which affects in no way the outcome of a case.

Mr. Francisco assures us that it has not been his intention to be recreant to the respect and consideration which he has always shown the highest tribunal in the Philippines, and that the language of the last paragraph of his motion of June 19 was not meant to offend the dignity of the court. I do not think that the language found in Mr. Francisco's motion constitutes contempt of court, but conceding that it did require explanation, I would accept his disavowal of wrong intent at its face value. I would not mar the record of a member of the bar of long and honorable standing with this blemish. With due deference to the opinion of the majority, I must strongly dissent therefrom.

Respondent attorney found guilty of contempt, fined, and reprimanded.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.