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## THE WRIGHT HABEAS CORPUS CASE

The press has confused in the minds of many readers the situation current in the Wright-Tan C. Tee case. The essential facts are brief. Early this year the insular auditor, Ben F. Wright, would not issue, when requested to do so, his certificate that funds are available for work on the Iloilo marginal wharf; he held, as he still holds, that negotiations with the contractor, Tan C. Tee, had been carried farther than they really ought to be before the auditor's certificate required by law was requested. (Administrative Code, 607-608). Colonel Stimson, as governor general, failed of reconciling the divergent views of the auditing and the public-works bureaus; he disagreed with the auditor's view on the fundamental question involved. On administrative appeal the secretary of war, now Governor General Dwight F. Davis, conditionally sustained Stimson's opinion.

Tan C. Tee then sought to mandamus the auditor, and proceedings took place in the supreme court. The full court, in Malcolm's opinion from which there was no dissent, held with the public-works director and directed the auditor to issue his certificate. Johnson, J., did not sit; his son-in-law, A. D. Gibbs, is the senior partner in the firm of Gibbs and McDonough, Tan C. Tee's attorneys. The court then adjourned for vacation, Justices Malcolm and Ostrand going on leave of absence to the United States. The other seven members of the court remained in the islands. Most of them were in Baguio, where the vacation justice, Johns, J., was sitting when subsequent events occurred. This fact, that a quorum of the full court has been accessible during the summer is important. For while the law permits the court its summer recess, it does not inhibit the court from sitting if it so desires. In fact a special division of the court was maintained this year at Baguio during the months of April and May.

After a case is decided, the practice of the court permits the unsuccessful litigant to file a motion for reconsideration. Such a motion was filed by Wright in this case. This motion was overruled by Johns, J., as vacation justice, and from this order Wright appealed to the court as a body. An appeal of this character has heretofore been supposed to tie the hands of the vacation justice and to carry the matter to the court as a body. But in this case Johns ordered Wright to comply with the decision. This Wright refused to do, whereupon he was first fined ₱500 and then placed under arrest. After this occurred in Baguio, a writ of *habeas corpus* was issued by Street, J., upon application of Wright, in Manila, and the writ was made returnable July 1, the first day of the next term of the court. The contention of Wright, and the theory upon which the writ of *habeas corpus* was issued, is that Wright's appeal from the order of the vacation justice overruling his motion removed the case from the jurisdiction of the vacation justice, so far as immediate enforcement of the decision is concerned.

None of the merits of the mandamus case was involved in the *habeas corpus* proceedings. It has been erroneously inferred that Justice Street's action divides the court upon fundamentals of the case at bar. As to a quorum, another matter brought in question by the press comment, there will be a quorum of the full court prepared to act on the case July 1, when the writ of *habeas corpus* is returnable. The quorum will comprise Chief Justice Avanceña, and Street, Villamor, Johns, Romualdez, and Villareal, JJ., six in all, with Johnson, for the reason given above, not sitting.

Acts of the vacation justice are subject to ratification by the court when it convenes *in banc* for its annual sessions. This procedure is perfunctory.

The quorum sitting July 1 may determine, as no doubt it will, whatever questions remain in legal dispute. It is not the practice to grant frivolous appeals, i. e., those based upon insufficient grounds, or which thresh over old straw. The court may confirm the Malcolm decision of March, deny the petition for rehearing, refuse to entertain an appeal to the supreme court of the United States. Again, it may not: Wright still has another day in court. But even if the court adhere irrevocably to its March decision and issue its final decree, that will not *per se* bar Wright from reaching the court in Washington (even if, to avoid contempt of the court here, he issues the certificate required of him); for the court in Washington may take jurisdiction by *certiorari* in whatever Philippine cases it desires to have come up to it—of those involving sufficient value, as this one does.

If this latter possibility were the outcome, all that had transpired here would be void as of date of the Washington court's action. Water under the bridge could not be recovered.

No, the case does not go over to October, when Justices Malcolm and Ostrand are expected back in Manila. The delay is only to July 1, almost upon us. But there has been delay enough, in all conscience; and all this regrettable litigation, costly to both sides and to the public, even involving personal expense to the auditor, demand upon him for a personal bond of ₱150,000, besides a fine of ₱500 actually paid.

## THE PAPERS LOOK AT DAVIS

The *Bulletin* picks up Governor General Davis's statement that he will arrive in Manila with an open mind, and says that he will be received with an open mind, "the attitude here is one of watchful waiting, . . . he will make for himself the rating which is to be given him." Regretting his lack of experience here, the same paper describes the "efforts . . . to write a Davis inaugural message out of the Stimson farewell address to the legislature" as "a political maneuver as dangerous as it is clever." It says there can be no quarrel with the major policy, economic development; the disposition of everyone to assist Colonel Davis is sincere. In its editorial of May 17, the *Bulletin* draws the deadly parallel and, finding "his standing such that he could not be ignored," accepts his appointment as a political one.

The *Herald*, May 21, says "what is the use of squawking now? . . . The fact that our favorite lost in the race is no reason for shedding our tears over it . . . It seems premature for his detractors to say just now what manner of a Governor General Mr. Davis would turn out to be." This paper makes nothing of previous experience in the islands, "some of our best governors general had never had any previous schooling in Philippine affairs before their acceptance of the Philippine post . . . (Stimson) seldom sought the advice of local wiseacres. And if he did, it was only to make doubly sure that his own opinion was correct."

The *Herald* will be inclined to find in Governor Davis "a kindly attitude" such as Taft, Forbes, Harrison and Stimson had (it says) "and a sense of the fitness of things."

The *Tribune*, catering like the *Herald* to a young public, and sponsoring nationalism, thinks "Davis should be committed to the Stimson policies on the powers of the Filipinos in the government under the Jones Act (the islands' organic law, of 1916, prescribed by congress). These policies were put into effect with Mr. Davis as secretary of war, and, thus, as the cabinet member sponsoring them, he cannot now with good grace frown upon these policies without inviting the charge of inconsistency." But the *Tribune*, like the *Bulletin*, finds the choice a political one: "it now develops that the Hoover regime . . . has chosen . . . a new executive here to play orthodox politics." It hopes for clarification of policy, and refers particularly to the stymied situation respecting the government business corporations.

The *Times* spit on its hands May 16 and came very much to the point on this question of converting Malacañang into a political post:

"The President has made a serious mistake. He has gone counter to the established traditions of his party and he has laid the ground for future treatment of the Philippine post as a happy hunting ground for political job seekers . . . He has done his party, his country and the Philippines an ill turn." Pausing to remark the excellent personal qualities of Colonel Davis, and to register (seemingly in the Hollywood sense) optimism concerning his administration, it goes on to a vehement close: "That is not the point at issue. The appointment of Mr. Davis, however laudable it may be, means that the United States has definitely abandoned the policy of previous years. It is discouraging news for those of us who, for many years, have preached the necessity of building up here the traditions of experienced and continuous American colonial policy. It serves notice on future appointees to the post of vice governor that they are to be considered purely as 'heads of the department of public instruction', not as potential timber for Malacañang. It must necessarily lower the quality of men who will accept the appointment." Not yet talked out, this was all followed up with *Dissecting Sophistry* May 20, paying its respects to the peculiar idea that "the post of Governor General of the Philippines should be filled by a man nationally known in the United States," and opining that Malacañang "is the job of a hard-working executive" and that "the probability of a short sojourn is one of the principal arguments against the appointment of Mr. Davis, just as it was against that of Mr. Stimson. The new Governor General barely has time to learn a few details of this complicated problem before he is called to another field."

But it applauds Colonel Davis's emphasis upon economic development, in another editorial, May 21.

*La Vanguardia* falls into line with the common viewpoint of the Filipino press, deferential to the state council, remarks that Colonel Davis is that sought-for man, nationally known, and a man likely to be inspired with the policy of cooperation and sympathy of his predecessor, Colonel Stimson—a man too who will be successful in this role of the understudy.

*La Defensa* (Catholic) feels that Colonel Davis "comes thoroughly prepared" and "it seems that he will follow along the cooperation policy established here by former Governor Stimson, and because of this he already has the cooperation of the Filipino leaders. . . . We must note, however, that the new Governor General does not seem inclined to favor our desires for Independence, and although this circumstance will not make him necessarily a bad governor, on the other hand it is possible that under his administration our activities in favor of independence may suffer a little. . . . We may lose in this important aspect of our national life."

*El Debate* (labor) swells the chorus of the Filipino press that Colonel Davis is *the man for all*. Its editor is a member of the legislature and is closely identified with the majority leadership.