Notes and Comments

May the Court of Industrial Relations Fix Wages to the Extent of Driving the Employer to Bankruptcy?

In general, it may be said that the right of employer and employee to contract with respect to wages is part of the liberty protected by the Constitution, and that this necessarily includes the right to fix the price at which labor is performed. However, it would seem that liberty of contract with respect to wages is, like other contracts between employer and employee, subject to the proper exercise of the police power of the state to the end that society as a whole, as well as its individual members, shall be protected against the evil effects of oppressive asd unconscionable contracts.[1] The power of the Court of Industrial Relations to determine and fix minimum wages for workers and employees has already been upheld as constitutional.[2] The minimum wage so fixed must be such as "would give the workingmen a just compensation for their labor and an adequate income to meet the essential necessities of life, and at the same time allow tne capital a fair return on its investments".[3] The Court of Industrial Relations is, therefore, not granted absolute discretion in fixing the minimum wage. It must be guided by the aforementioned objects laid down by the law.

In a labor case recently decided by the Court of Industrial Relations, an increase in wages was granted to the employees of the Leyte Land Transportation Co., Inc., although it was shown that such increase would drive the company to bankruptcy. This judgment was affirmed by the Supreme Court on appeal.[4]

In the United States, the weight of authority seems to support this ruling. In one case, the California court said, "We assume that any wage increase will put the company out of business . . . The employee has no better claim to continue in business upon the basis of a subnormal payroll than the employees have to seek wage in-

---

[1] 31 *American Jurisprudence*, p. 1077.

[2] Antamok Goldfields Mining Co. v. Court of Industrial Relations et al., 40 O. G., 8th Supp., p. 173; The International Hardwood and Veneer Co. v. The Pangil Federation of Labor, 40 O. G., 9th Supp., p. 118; Central Azucarera de Tarlac v. Court of Industrial Relations et al., 40 O. G., 9th Supp., p. 146.

[3] Commonwealth Act 103, sec. 5, par. 3.

[4] Leyte Land Transportation Co., Inc. v. Leyte Farmers' and Laborers' Union, G. R. No. L-1377, May 12, 1948.

creases upon the basis of the size of the employer's past profits or the amount of his assets . . Never have the wages of the employees . . . been related to profit or loss contingencies . . . Over the many years when the company made sustained and substantial profits, the employees were not offered a share . . " [5] Some arbitrators have given virtually no weight to the argument of the employer's inability to pay, especially where laborers seek only wages which other employers can and do pay.[6]

In a case where the opposite view was upheld, the laborers contended that the losses the company was suffering were only temporary. This contention was considered by the arbitrator (who stands in the same position as the Court of Industrial Relations) to lie in the realm of prophecy and that the possibilities of a profit being secured by adroit management were speculative, and ruled that only such an increase as seemed fair on other grounds should be granted.[7] In cases where an increase above the prevailing rates in the same industry is asked, or where there would be uncertainty as to the future, the courts or arbitrators are reluctant to accede to the demands of employees.[8]

In the case of National Labor Relations Board v. Cities Service Oil Co.[9], where union representatives were denied by the defendant company access to oil tankers owned by the defendant company, to get in contact with union members on board the tankers, the United States Supreme Court said: "Doubtless, interference must not be so substantial as to preclude the reasonable exercise of the employees' rights . . But in determining what is a reasonable opportunity to bargain through chosen representatives, we think the board may weigh the inconvenience, risk or damage imposed upon the employer against mere inconvenience to the Union, of access to the vessel." Although this case does not involve an increase of wages, it recognized the right of the employer to be protected against unreasonable demands of the employees.

The principal criticism in the United States of the ability to pay argument is that it tends to tie wages to a standard which fluctuates in a manner which may be unrelated to the skill or industry of the individual worker, and would produce widely variant pay scales

---

[5] California Street Cable R. R., 2 ALAA 67168, 47 Columbia Law Review, No. 6, p. 1039.

[6] International Braid Co., 2 ALAA 67669; Western Union Telegraph Co., 4 LA 251; Third Avenue Transit Corp., 1 ALAA 67257; Dixie Firebricks Co., Inc., 1 ALAA 67141; 47 Columbia Law Review, No. 6, p. 1036.

[7] Conde Nast Publications, Inc., 1 ALAA 67168 47 Columbia Law Review, No. 6, p. 1036.

[8] River Valley Tissue Mills, Inc., 1 ALAA 67348; U. S. Sugar Co., 1 ALAA, 67107.

[9] 122 F 2nd, p. 149.

from plant to plant in conflict with the principle of a standard wage for a given skill.[10] On the other hand, if a concern is allowed to go out of business due to the increase of wages, the result would re dound to the ultimate injury of labor as well as the general public.[11] Unemployment will strike those workers whose marginal productivity is such that an employer cannot profitably retain them and still pay the prescribed wages.

In the Philippines, however, the law seems clear on the point. It requires a minimum wage which would, among other things, insure fair returns to the employer. In at least two cases, our Supreme Court has recognized the rights and interest of the employers in being allowed to continue in business. In Central Azucarera de Tarlac v. Court of Industrial Relations et al, the court, although it gave judgment for the employers, said: ". . . the court, in prohibiting the reduction of working days of employees and laborers paid on monthly basis, did not overlook the interest of the petitioner company and reached the conclusion that the resulting outlay will not adversely effect the reasonable and fair return on its investment." [12] In another case, where the employer dismissed some of the laborers because his business was a losing proposition, the Supreme Court held: "Where, as in the present case, it becomes necessary for an employer to reduce its personnel due to losses in the operation of its business, its right to determine who among its employees would be retained or dismissed should not be interfered with, unless it can be shown that the employer, under cover of this right, is proceeding against the employees in an unjust and capricious manner." [13] These cases, though not exactly in point, illustrates how the Court on Industrial Relations should proceed in settling industrial disputes—by affording security of a living wage to the employees without losing sight of the employer's right to a fair return on his capital.

Perhaps, even without the express provision of sec. 5 of Commonwealth Act 103, an increase in wages which would result in the bankruptcy of the employer, would be tantamount to deprivation of property without due process of law, one of the requisites of due process being that the law be reasonable in its operation. The term "property", as ordinarily employed, includes every interest anyone may have in anything that is the subject of ownership, together with

---

[10] 47 Columbia Law Review, No. 6, p. 1037.

[11] *Ibid.*

[12] 40 O. G., 9th Supp., p. 150.

[13] Northern Luzon Transportation Co., Inc. v. Court of Industrial Relations and *Dauiti Nagcaycaysa Nga Mangmanggued* 40 O. G., No. 10, p. 2082.

the right to freely possess, use, enjoy and dispose of it.[14] In many cases, the word, "property" has been interpreted as including business.[15] Granting an increase in wages which would drive an employer out of his business, will be favoring the laborer to the detriment of the employer, and would therefore constitute a denial to the latter of the equal protection of the laws.

---

[14] Wood v. Security Mut. L. Ins. Co., 198 NW 573.

[15] Sailors' Union v. Hammond Lumber Co., 156 Fed. 450; Gleason v. Thaw, 185 Fed. 35; Robison v. Hotel and R. Employees Local, 207 Pac. 132; Eden v. People, 43 NE 1108; Palmer v. Concord, 97 Am. Dec. 605; Purvis v. Local No. 500, 214 Pa. 348; Wood v. Security Mut. L. Ins. Co., 198 NW 573.

MARITA ALMEDA LOPEZ

* * *

The Effect of Death of the Accused on His Pecuniary Liability

A searching inquiry on the effect of the death of the offender on his civil liability is in order even if only to satisfy the demands of equity and justice. The pertinent provision of the Revised Penal Code on this subject reads:

Art. 89. How criminal liability is totally extinguished.—Criminal liability is totally extinguished:

> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

Pecuniary liabilities include civil liability (Art. 119), fines (Art. 49), and costs.[1] As to fines and costs, there is no question that they are extinguished by the death of the offender before the rendition of final judgment. But with respect to civil liability, the doubt arises.

A well-known writer on criminal law made the following comments with respect to said article,

> "Supposing a person accused of estafa is sentenced by the Court of First Instance to suffer six months imprisonment and to indemnify the aggrieved party in the sum of ₱200.00. On appeal and before final judgment could be rendered, the accused died. Under the provisions of this paragraph, both liabilities of the accused, penal and civil, are extinguished."[2]

The indemnity for damages in a judgment in a criminal case is purely civil in nature and is independent of the penalty imposed.[3] It is true that when a civil action is going on and a criminal case is instituted, the civil action for damages should be suspended, but the suspension is grounded on public policy. Public policy requires that all civil remedies in favor of a party injured by a felony should be suspended until after the termination of a criminal prosecution against the offender. This doctrine of suspension is based on the ground that the interests of society require, in order to secure the effectual prosecution of offenders by persons injured, that they should not be permitted to redress their private wrongs until public justice

---

[1] Eulogio Revilla, Penal Code, Acts, and Procedure (1930 ed.), Lawyers Co-operative Publishing Co., p. 237.

[2] Guillermo Guevara, Revised Penal Code (4th ed.), National Printing Co., p. 197.

[3] Quiming v. De la Rosa, 40 O. G. (1 S) No. 3, p. 85.

has been first satisfied by the conviction of felons, whereby a strong incentive was furnished to the individual to discharge a public duty by bringing his private interest in aid of its performance, which would be wholly lost if he were allowed to pursue his remedy before the prosecution and termination of a criminal proceeding.'

In the case of U. S. v. Heery, our Supreme Court laid down the following doctrine:

> "Does the fact that in this country civil liability is, as a rule, determined in the criminal action transform it into criminal liability and thus make it a part of the punishment for the crime? Certainly the mere form of a remedy should not affect its substance. And there are many indications in the Penal Code that the civil liability therein imposed for the commission of crimes was not intended to be merged into the punishment for the crime. Articles 17, 119-126, which provide for civil liability of offenders, are confined strictly to that subject. Article 23 sharply defines one distinction between the criminal and civil liability, in that the former cannot be waived by a pardon of the partly injured, while the latter may be waived. The chapters of the Penal Code dealing with the classification and duration of penalties (articles 25 to 62 inclusive), nowhere list the civil liability attached to a crime. And Article 133 provides that 'Civil liability arising out of crimes or misdemeanor shall be extinguished in the same manner as other obligations, in accordance with the rules of civil law.'
>
> "In commenting upon this article, Groizard (vol. 2, p. 717) says: 'From crimes arise, as we know, two liabilities: criminal and civil. The first is extinguished by the methods to which we have just adverted. The method of terminating the second is not a subject of criminal law, but of civil law. x x x
>
> " 'The character of this work does not permit us to tarry for further explanations. We would not be commenting upon subjects included within the Penal Code but laws of a purely civil character.'
>
> "And, as a complement of this article, article 1813 of the Civil Code provides that civil liability attached to crimes may be compromised but that the criminal liability is not thereby. Other distinctions might be noticed which show that there is no merger of the two kinds of liability from the mere fact that they are tried together. But these are, we think, sufficient to sustain the point."

---

[4] American Jurisprudence, vols. 14-15; see under heading Criminal Law.

[5] 25 Phil. 600. Other instances of the separability of civil liability: insanity, imbecility, and minority (without discernment)—existence of civil liability—(U. S. v. Baggay, 20 Phil. 142; Art. 101, Revised Penal Code); right of waiver or reservation of the civil action—(People v. Evia, 62 Phil. 546; Rule 107 sec. 1(a), Rules of Court); extinction of the penal action does not necessarily extinguished the civil action—(Ramcar Inc. v. De Leon, G.R. No. L-1329, May 15, 1947; Rule 107[d], Rules of Court); Dismissal of criminal case not extinguished civil action —(P. P. I. v. Sixto Velez, G.R. L-1219, Feb. 25, 1947); right to appeal by offended party as to indemnity—(People v. Ursua, 60 Phil. 252).

The civil liability established in articles 100, 101, 102, and 103 of the Revised Penal Code are extinguished in the same manner as other obligations, in accordance with the provisions of the civil law. Civil liability, whether arising from a crime, a tort or a contract, is extinguished by the same causes recognized in the Civil Code, namely: (1) payment or fulfillment; (2) loss of the thing due; (3) remission of the debt; (4) merger of the rights of the creditor and debtor; (5) compensation; and (6) novation.[7] And death is not one of them.

Our Rules of Court provide that action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him." [8] An action to recover damages for an injury to person or property survives therefore the death of the offender, and the action may properly be brought against the executor or administrator of the offender.

The civil liability established in articles 100, 101, 102, and 103 of the Revised Penal Code includes: (1) restitution; (2) reparation of the damage caused; (3) indemnification for consequential damages.[9]

It is a general principle that no man can be divested of his property without his consent or voluntary act.[10] Whoever may have been deprived of his property in consequence of a crime is entitled to the recovery thereof, even if such property is in the possession of a third party who acquired it by legal means other than those expressly stated in article 464 of the Civil Code.[11] This is based on the uncontrovertible principle of justice that the party injured through a crime has, as against all others, a preferential right to be indemnified, or to have restored to him the thing of which he was unduly

[7] Art. 112, Revised Penal Code.

[8] Ambrosio Padilla, Revised Penal Code (1947 ed.), International Printing Co., p. 342. This principle is further reaffirmed by Art. 113 which provides that, "Except in case of extinction of his civil liability as provided in the next preceding article, the offender shall continue to be obliged to satisfy the civil liability resulting from the crime committed by him, notwithstanding the fact that he has served his sentence consisting of deprivation of liberty or other rights, or has not been required to serve the same by reason of amnesty, pardon, commutation of sentence, or any other reason." The all-embracing phrase "any other reason" may include death.

[9] Rule 88, sec. 1, Rules of Court.

[9] Art. 104, Revised Penal Code.

[10] U. S. v. Sotelo, 28 Phill. 147.

[11] "This doctrine had already been announced in Del Rosario v. Lucena (8 Phil. 535) and Varela v. Matute (9 Phil. 479), and reiterated by this court in U. S. v. Sotelo (28 Phil. 147)." People v. Alejano, 54 Phil. 987. Art. 464 of the Civil Code provides, "The possession of personal property acquired in good faith is equivalent to a title thereto. Nevertheless, one who has lost personal property or has been unlawfully deprived of it may recover it from any

deprived by criminal means.[12] To construe that the civil liability of the offender is extinguished by his death before rendition of final judgment is repugnant to the concept of restitution which is an element of civil liability. *Verba nihil operari melius est quam absurde.*

The novel idea of giving limited application to the extinction of the pecuniary liability of the offender is in conformity with the letter and spirit of the provisions of our substantive and remedial laws on the matter. But it is decidedly against authorities.[13] What course will our Supreme Court take?

BALDOMERO VILLAMOR

---

person possessing it. If the possessor of personal property lost or stolen has acquired it in good faith at a public sale, the owner cannot recover it without reimbursing the price paid therefor. Neither can the owner of things pledged in pawnshops (Montes de Piedad), established under the authority of the Government, recover them, whoever may have been the person pledging the same, without previously refunding to the institution the amount of the loan and the interest due thereon. With respect to things acquired on exchange, or at fairs or markets, or from a merchant legally established and habitually engaged in dealing in such things, the provisions of the Code of Commerce shall be observed." And death is not one of them.

[12]Arenas v. Raymundo, 19 Phil. 46.

[13] Justice Mariano Albert is of the same opinion as Judge Guillermo Guevara; Mariano Albert, Revised Penal Code, University Publishing Co. (1948 ed.). See comments under Art. 89. But see U. S. v. Heery, *supra*, where our Supreme Court said, "There is, therefore, no new or foreign element in civil liability under the Penal Code of this country as compared with civil liability under the American law. x x x Here as there, civil damages are no part of the punishment for the crime; here as there, they are rendered to the citizen and not to the state." And the American Courts, as early as the case of U. S. v. Buntin, 10 Fed. 730, have consistently followed the doctrine that the public and the person injured by a crime each has a distinct although concurrent remedy on the ground that a criminal act is both a private and a public wrong, and that these remedies may operate simultaneously. (William Mach, Cyclopedia of Law and Procedure, American Law Book Co., vol. 12, p. 163.

* * *