given, it will be seen how easily officers of the law may deviate from the truth in their testimony before the courts in order to make it appear that the apprehension of the accused was by virtue of an entrapment which finds judicial sanction in this jurisdiction. We can see from the very nature of these cases that this doctrine involves a ticklish and sensitive application. If a public officer could resort to instigation, it is not idle thinking to assume that he is capable of claiming entrapment by the simple expediency of testifying that the criminal intent originated from the accused. Peace officers in their desire to enforce the law should not resort to this foul means. Their zeal and enthusiasm should be tempered with judiciousness in order to protect innocent citizens from unnecessary embarrassment and suffering.

However, the strong probability that the person apprehended and charged as a consequence of a valid entrapment would shift the criminal initiative to the officers who have arrested him cannot be overlooked. These considerations expose the courts to uncertainties and errors in its findings of facts upon which the conviction or acquittal of the accused hinges. It must have been for this reason that entrapment and instigation came to be referred to as the borderline defenses.

The actuation of the accused of passing the criminal initiative to the peace officer is understandable because he is fighting for his freedom. But the practice of the agents of the law of instigating a crime and then of arresting and prosecuting their otherwise innocent tools is beyond rational comprehension. As Justice Sanborn said:

> The first duties of the officers of the law are to prevent, not to punish crime. It is not their duty to incite and create crime for the sole purpose of prosecuting and punishing it.[107]

[107] Butts v. United States, 273 Fed. 35 (1921).

REFERENCE DIGEST

CONSTITUTIONAL LAW: FREEDOM OF CONSCIENCE. The Rizal Bill is a bill sponsored by Senator Laurel seeking to make as compulsory reading in colleges and universities the original and unexpurgated copies of the *Noli Me Tangere* and *El Filibusterismo*. Because of its controversial nature, it has provoked the opposition of a great segment of our population. The bill thereby gave rise to several conflicting opinions.

Originally, the bill sought to make *compulsory reading* of the unexpurgated and original version of the famous novels in colleges and universities. Subsequently, an amendment was introduced by Senator Laurel making them *basic texts* in colleges and universities.

Objections were raised on the ground that this bill would violate the freedom of conscience enjoyed by citizens of a democratic country; that it seeks "unification of opinion" by compulsion. Senator Laurel himself admitted that the word "compulsion" is obnoxious; that it is the very antithesis of freedom and that it is something which is abhorred in a democratic country.

It is this element of compulsion which gave rise to the controversy over the bill. By compelling a Catholic student to read the unexpurgated copies of the *Noli* and the *Fili*, which admittedly contain some "degree of irreverence" towards the Catholic faith, his freedom of conscience is violated. In support of their contention, the opponents of the bill cite the case of *Barnette* v. *Virginia*.[1] According to the proponents of the bill, however, the case of Barnette is not applicable, because while in that case the student was compelled not only to salute the flag but also to recite the pledge of allegiance to the United States, here all that the original bill would compel the student to do would be to read the unexpurgated version of the novels; that he is left free to make his own conclusions and that the state does not, as in the case of Barnette, compel him to make an act of faith; that he is not compelled to believe what Rizal has written; and that, therefore, his religious convictions are not invaded. To this contention, the opponents of the bill argued that the amendment proposed to make the two novels as basic texts, which means that a student is not only required to read and examine them, but also to study and learn them if he would pass the course. If he does not learn the ideas contained in the novels, he would be penalized by getting low grades and ultimately fail in his

[1] 319 U.S. 624 (1943).

class. This, in effect, would be an invasion of his religious convictions, as in the *Barnette* case.

Another consideration which should be taken into account in passing on the merits of the bill is the deep religious faith of the Filipino people. By imploring the aid of Divine Providence in the preamble of their Constitution, they have "manifested their intense religious nature and placed unfaltering reliance upon Him who guides the destinies of men and nations."[2] Such deep religious faith should always be protected. Care should be taken that nothing is done by the government or its officials that may lead to the belief that the government is taking sides or favoring a particular sect or religion. The government should be impartial towards all religious groups and must take care that such impartiality be at all times above suspicion or doubt. This bill, if passed, would create the suspicion that it is intended to work against the Catholic faith.

There are thus two main considerations in determining the worthiness and legality of the bill: first, the element of compulsion; and second, the deep religious faith of the Filipino people. The purpose is definitely meritorious for it seeks to arouse in the Filipino heart, love of country, civic virtues and the spirit of liberty. There is no question about the righteousness and nobility of its purpose. There is really no anti-Rizalist among Filipinos, so the contention goes. It is agreed that the Filipinos should devise ways and means to make Rizal better known and loved by the people. But should this be done by compelling them to read something which is against their religion? Would Rizal, if he were alive today, be happy at the spectacle of seeing an attempt to ram his writings down the throats of some of his own people who for religious reasons would not want to read them?

The element of compulsion should therefore be removed if this bill were to be approved. It is proposed that the bill may provide for compulsory reading of the two novels in the original and unexpurgated editions but that the student may be exempted from this requirement on grounds of religious belief. Nevertheless, he must take courses on the *Noli* and the *Fili* after which he is left at his own discretion to decide whether to read the original or not. This in effect would carry out the very purpose for which the bill is sought to be enacted, that is, to teach the youth to think for themselves. To the argument that pressure might be exerted by certain religious quarters to prevent students from reading the novels, it may be said that such fears are without any basis at all and that it is an insult to the ability of our youth to know and distinguish what is good for them.

In other words, the amendment opens a little doorway through which a student may escape from that terrible predicament when to obey the state law would be to violate his religious conscience and to follow his religion would be to become a lawbreaker. (Emmanuel Pelaez, *The Rizal Bill and Freedom of Conscience,* 7 THE LAW REVIEW No. 1, at 9-20 (1956). ₱2.00 at U.S.T., Manila. This issue also contains: Macapagal, *The Reparation Agreement;* Alafriz, *Prospects for New Lawyers;* Gatchalian, *The Practice of Law.*)

[2] Aglipay v. Ruiz, 64 Phil. 201, 206 (1937).

LABOR LAW: WORKMEN'S COMPENSATION ACT. What is the nature and theory of the Workmen's Compensation Act?

First. — It is not the main purpose of the Act to provide a means of disposing of a private quarrel between the employer and employee about a personal injury.

Second. — It is not a branch of strict liability in tort, and hence, not founded either on accusation or fault.

Workmen's Compensation is in the nature of social insurance primarily designed: (1) to protect the worker and his family against substandard living conditions, as a consequence of loss or diminution of earning capacity resulting from work or employment injuries, and (2) to secure an economic readjusment of the burden of such injuries as a peculiar hazard inherent in the methods of production of modern-day industrial societies.

The system, in other words, at the same time that it creates the liability, also creates, as part of the general scheme, the means of relieving the employer the real burden of that liability. Since it is the employer who initiates the undertaking with a view to his own benefit, and reaps any profit of the business, it would not be unjust that he bear temporarily the loss due to risks encountered by workmen in the performance of their work.

What is the coverage of the Act?

Section 1 of the Workmen's Compensation Act provides that "This Act shall be applicable to all industrial employees. . . ." And industrial employment, according to Sec. 32, "in case of private employers includes all employment or work at a trade, occupation or profession exercised by an employer for the purpose of gain. . . ."

The Act used the term "industrial," *i.e.*, profit-motive. Is the coverage of the Act limited to industrial employment only? Are non-profit enterprises thereby impliedly exempted from the Act?

In the cases of *Quezon Institute v. Velasco,* (G.R. No. L-7742, Nov. 23, 1955), and *Quezon Institute v. Parazo,* (G.R. No. L-7743, Nov. 23, 1955), it was held that employees of non-profit enterprises, particularly of the charitable institution types such as the Quezon Institute, are denied protection against loss or diminution of earning capacity irrespective of

the ability of such institution to afford them such protection through the passing-on-of-the-risk device.

According to the author, the Act uses the term "applicable to *all* industrial" and not "applicable *only* to industrial...." The Workmen's Compensation Act is in the nature of social insurance for the protection of the workman and his family. Hence, in imposing liability initially upon the employer, his capacity to pass on such liability eventually to the public in the form of enhanced prices of goods or products in case of manufacturers or agricultural producers, or higher rates of charges for services in case of public utility operators, in conformity with the scheme of the system, should be the main consideration. The interpretation given to the provisions of the Act in the above cases, according to the author, "is clearly a fundamental error because, as shown above, compensation liability is not founded upon the ability to bear the risk of work injuries — which the Court wrongly assumed when it stressed the word 'industrial' — that is, the profit-motive — but upon the capacity to pass on such risk to the public." The opinion of the author seems to be the most logical and reasonable interpretation that can be given to the provisions of the Act if we are to give them the true rationale which the Act really intends to achieve.

How are the character of the enterprise and the employment relationship to be determined?

Whether or not an enterprise is an industrial or a profit-motive one is clearly a question of fact. Its character is, therefore, best ascertained by an actual inquiry into the peculiar circumstances of each case.

In determining the employment relationship, courts may resort to traditional civil as well as to common law rules defining service relationship. This recourse must, however, be exercised with caution. The principles of *respondeat superior* in tort, or *scope of authority* in case of agency or corporation, have been evolved mainly to delimit the extent of employer's liability, and not for securing to third persons the right of recovery. The employment relationship in every case must be established for it is the jurisdictional foundation of liability.

Some suggested rules in determining the scope of authority of corporate officers and corporate liability are:

(a) the definition test of employer (or employee as the case may be);

(b) the corporation principle of delegation of authority, expressed or implied;

(c) the apparent authority of certain officers in relation to innocent third persons;

(d) the inherent authority of a ship captain to hire workers under certain circumstances;

(e) the rule of liberal construction in favor of the claimant; and

(f) the economic reality test for determining the existence of employment relations for purposes of social legislation.

The coverage of the Workmen's Compensation Act is not extended to independent contractors or casual workers.

By an independent contractor is meant "one who exercises independent employment and contracts to do a piece of work according to his own methods and without being subject to control of his employer except as to the result of the work."

There are two circumstances indicative of independent contractorship, though not decisively so, namely:

(1) whether the person engaged has capital or money of his own with which to pay his laborers; and

(2) whether he filed a bond to answer for the fulfillment of his contract with his employer.

These circumstances may clearly the indicate absence of the employer's right of control over the performance and that an independent contractor is engaged for a specific job or piece of work.

The exemption of an independent contractor from the coverage of the Act is based on the assumption that he himself is in a position to spread losses.

By a casual worker is meant "a person whose employment is purely casual and is not for the purpose of the occupation or business of the employer."

Compensation coverage does not extend to a casual worker because his services have nothing to do or are not connected with the customary business of the employer.

Whether the employment is casual or not is a question which must be determined with principal reference to the scope and purpose of hiring rather than with sole regard to duration or regularity of service.

Compensable injury or disease under that Act may be (a) personal injury from accident, and (b) occupational diseases, particularly, "tuberculosis or other illness directly caused by such employment or either aggravated by or the result of such employment."

Accidental injury need not be unusual or unexpected or different from the usual work performed. It is enough that the injury produced on a particular occasion is neither designed nor expected.

As to occupational disease, to be compensable, it seems enough that the disease itself is unexpected even if it resulted merely from the work under usual conditions or that some usual connection between the disease and the employment be shown.

The injury must, however, "arise out of and in the course of employment."

The phrase "arising out of" refers to the "origin or cause of the accident. . . ." By origin or cause does not mean proximate cause which carries with it the idea of an active force producing the injury, because "arising out of" clearly suggests the active force may be something outside the employment, while the employment is a passive condition or setting out of which the harm arises.

The tests applied are:

(a) the Causation Test — The establishment of some causal relation between the injury and the employment.

(b) the Peculiar Risk or Hazard Test — An injury arises out of the employment if it arises out of the nature, conditions and obligations, or incidents of the employment; in other words, out of the employment looked at in any of its aspects. It need not arise out of the nature of the employment only.

(c) the But-For Test — If but for the employment the injury would not have occurred, and the cause of harm is neutral, *i.e.*, neither distinctly associated with the employment nor distinctly personal to claimant, the injury is compensable.

The phrase "in the course of employment" refers to the time, place and circumstances under which the accident takes place. Otherwise stated, a workman is regarded as being in the course of his employment while he is engaged therein, in or about the premises where his services are being performed or where his services require his presence as part of such service and during the hours of his service as such employee.

The rules applied here are:

(a) the Added Peril Rule — The workman must not unnecessarily increase the injury to himself as to put the risk of liability to his master beyond that contemplated by his contract of employment. This rule denies compensation if the workman acted carelessly or strayed from the customary path.

(b) the Coming and Going Rule — This rule allows compensation for injuries sustained even while coming or going to work, especially if the transportation is an incident of the employment, and expands the term "premises" as to include the customary and practicable ingress or egress.

(c) the Detaching Conduct Rule — This rule denies compensation to an injured workman who temporarily detaches himself from the employment by engaging in purely personal activity.

(d) the Employer-Benefit Doctrine — Under this rule, a deviation inspired to further the employer's interest is not a deviation if the employee acted in accordance with common standards of care compatible with his

duties as such employee. In other words, there must be some factor of benefit, either direct or indirect.

In this connection, it is ripe to state that not all rule violations will bar recovery. In determining the liability of the employer and the right of recovery of the employee, courts must distinguish between:

(a) the violation of a rule limiting the scope of employment; and

(b) the violation of a regulation which directs the nature of the work.

Violation of the first constitutes abandonment of the employment and an employee-violator cannot recover for the injury sustained by his deviation. Violation of the second is generally compensable since violation merely amounts to negligence and negligence is not a defense except when it is gross. (Jose C. Laureta, *Survey of 1955 Cases in Labor Law*, 31 PHIL. L.J. No. 3, at 335-360 (1956). ₱2.50 at U.P. Diliman, Q. C. This issue also contains: *Annual Survey of 1955 Supreme Court Decisions — Part III*, covering *Constitutional Law; Public Officers, Election Law and Municipal Corporations; Civil Procedure;* and *Evidence.*)