THE WORKMEN'S COMPENSATION ACT REVISITED

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CONGRESS, because perhaps of maximum zeal to infuse a strong sense of social justice into the country's legal system, has made quite a paradoxical, if not vexatious, mixture of remedies.

The Workmen's Compensation Act, in prescribing the compensation to be received by industrial employees for personal injuries, death or illness contracted in the performance of their duties, has given the following grounds for compensation:

> When an employee suffers personal injury from any accident arising out of and in the course of his employment, or contracts tuberculosis or other illness directly caused by such employment, or either aggravated by or the result of the nature of such employment, his employer shall pay compensation in the sums and to the person hereinafter specified. The right to compensation as provided in this Act shall not be defeated or impaired on the ground that the death, injury or disease was due to the negligence of a fellow servant or employee, without prejudice to the right of the employer to proceed against the negligent party.[1]

The Act however makes a qualification and warns that no compensation shall be allowed for injuries caused (1) by the voluntary intent of the employee to inflict such injury upon himself or another person; (2) by drunkenness on the part of the laborer who had the accident; and (3) by notorious negligence of the same.[2]

The New Civil Code also covers the same grounds more or less:

> Owners of enterprises and other employers are obliged to pay compensation for the death of or injuries to their laborers, workmen, mechanics or other employees, even though the event may have been purely accidental or entirely due to a fortuitous cause, if the death or personal injury arose out of and in the course of the employment. The employer is also liable for compensation if the employee contracts any illness or disease caused by such employment or as the result of the nature of the employment. If the mishap was due to the employee's own notorious negligence, or voluntary act, or drunkenness, the employer, shall not be liable for compensation. When the employee's lack of due care contributed to his death or injury, the compensation shall be equitably reduced.[3]

The New Civil Code says further:

> If the death or injury is due to the negligence of a fellow-worker, the latter and the employer shall be solidarily liable for compensation. If a fellow-worker's intentional or malicious act is the only cause of the death or injury, the employer shall not be answerable, unless it should be shown that the latter did not exercise due diligence in the selection or supervision of the plaintiff's fellow-worker.[4]

This last article is quite different from a corresponding provision in the Workmen's Compensation Act which prescribed that the right to compensation as provided in this Act shall not be defeated or impaired on the ground that the death, injury or disease was due to the negligence of a fellow-servant or employee, without prejudice to the right of the employer to proceed against the negligent party.[5] It is significant to note that the Workmen's Compensation Act has not offered a rule for compensating a laborer's death or injuries caused by the willful act of a fellow-worker. This gap is filled by the New Civil Code, by means of the last article quoted above.

The New Civil Code does not seem to cover the case where illness or disease is merely aggravated by the nature of the employment which, on the other hand, is one of the grounds for compensation in the Workmen's Compensation Act.[6]

In cases where through the cited articles 1711 and 1712 the New Civil Code and the Workmen's Compensation Act overlap, there have been discussions in legal circles as to how the two laws should operate, how this paradoxical, if not vexatious, mixture of remedies should be resolved. These discussions continued to grow until the coming of *Castro v. Sagales*,[7] where the Supreme Court laid down a rule, startling to many but still a rule that became, amidst the confusion, an omen for the high tribunal's opinion on the matter.

The plaintiff in this case was a widow whose husband had been killed in a fatal accident, while working as an employee for the defendant sometime in January 1952. The claim for compensation was filed before the Court of First Instance of Bulacan on August 1952, after R.A. No. 772 had taken effect on June 20, 1952. This Act created the office of the Workmen's Compensation Commissioner with exclusive jurisdiction to hear and decide claims for compensation under the same Act, subject to appeal

* LL.B., Ateneo de Manila (1957).

[1] WORKMEN'S COMPENSATION ACT 2 (Act No. 3428).
[2] *Id.* at § 4.
[3] Art. 1711 CIVIL CODE OF THE PHILIPPINES (hereinafter cited as NEW CIVIL CODE).
[4] Art. 1712 NEW CIVIL CODE.
[5] WORKMEN'S COMPENSATION ACT § 2.
[6] *Ibid.*
[7] 50 O.G. 94 (1953).

provided by law.[8] Before the passage of this Act, demands for compensation had to be filed before the regular courts.[9]

The high tribunal affirmed the opinion of the lower court that the latter was without jurisdiction to try the suit and made the ruling that all claims for compensation of a laborer or employee or his dependents formulated on or after June 20, 1950, that is, filed before the proper authorities on or after this date, should be decided exclusively by the Workmen's Compensation Commissioner, subject to the appeal provided by law, although the accident out of which the right to compensation occured before this date.[10]

But the case was just a precursor. The issue pertained to jurisdiction and the Supreme Court did not expressly make a reconciliation between the New Civil Code and the Workmen's Compensation Act, whether they were concurrent or exclusive of each other in their operation. But when the Supreme Court issued a statement in the same dicision that all claims for compensation of a laborer or employee or his dependents formulated on or after June 20, 1950 should be decided exclusively by the Workmen's Compensation Commissioner, though subject to appeal, a glimpse of the future was unveiled.

Then came *Manalo v. Foster Wheeler Corp.*[11] While in the employ of the defendant Foster Wheeler Corporation as a steel man, the plaintiff in this case was accidentally struck by a steel plate and suffered injuries, for which he accordingly asked compensation. The plaintiff filed his claim before the Court of First Instance which dismissed the suit on the ground that the Workmen's Compensation Commissioner had exclusive jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act, subject to the right of appeal.

The plaintiff raised for the first time the theory that had been quiet prominent in legal conversations that the damages could be demanded and assessed under the New Civil Code. In rebutting this contention, the lower court cited section 5 of Workmen's Compensation Act that the rights and remedies granted by this Act to an employee by reason of personal

[8] *Workmen's Compensation Commissioner, Appointment.* — "There is hereby created in the Department of Labor the Office of the Workmen's Compensation Commissioner, hereinafter designated the Commissioner, who shall be assisted by a Deputy Workmen's Compensation Commissioner. The Commissioner and Deputy Commissioner shall be appointed by the President of the Philippines with the consent of the Commission on Appointment and shall receive compensation at the rate of eight thousand four hundred pesos and seven thousand and two hundred pesos per annum, respectively.

"Upon the organization of the Office of the Commissioner, the existing Workmen's Compensation Division in the Bureau of Labor shall be abolished, and all its files, records, equipment, appropriation, and all the officials and employees of said division shall thereupon be placed under the control and management of the Commissioner." WORKMEN'S COMPENSATION ACT § 7-A, as amended, R.A. No. 772.

[9] *Id.* at § 31, (later amended by R.A. No. 772).

[10] *Id.* at § 46.

[11] G.R. No. L-8379, April 24, 1956.

injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representative, dependents or nearest of kins against the employer under the Civil Code and other laws, because of said injury.

The Supreme Court, resting its conclusion upon sections 5[12] and 46[13] of the Workmen's Compensation Act, affirmed the judgment of the lower court and made the observation:

> We are of the opinion that the law has been properly applied. It being quite clear, there is no possibility of interpreting it — as appellant has tried to do — in the sense that "where claims for compensation have already been filed with the Workmen's Compensation Commissioner, no further claims **for the same injury** may be filed under either the New Civil Code or other laws.
>
> The legislature evidently deemed it best, in the interest of expediency and uniformity, that all claims of workmen against the employers for damages due to accidents suffered in the course of employment shall be investigated and adjudicated by the Workmen's Compensation Commissioner, subject to the appeal in law provided.[14]

Unfortunately, in a case such as this where the decision would vitally affect the success of claims filed by workmen throughout the nation, the Supreme Court, for reasons of its own, quickly established the preference of the Workmen's Compensation Act over other laws, with just a general and vague assertion that it was "in the interest of expediency and uniformity." As deemed by the legislature in the absence of an extensive nationalization of the solution, the problem more than anything else, was left unanswered as where and when the corresponding provisions in the New Civil Code would be suitable. A reading of the high tribunal's opinion in *Manalo v.*

[12] "The rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code and other laws, because of said injury. Employers contracting laborers in the Philippine Islands for work outside the same shall stipulate with such laborers that the remedies prescribed by this Act shall apply to injuries received outside the Island through accidents happening in and during the performance of the duties of the employment. Such stipulation shall not prejudice the right of the laborers to the benefits of the Workmen's Compensation Law of the place where the accident occurs, should such law be more favorable to them. WORKMEN'S COMPENSATION ACT § 5, as amended, R.A. No. 772.

[13] **"Jurisdiction.** — The Workmen's Compensation Commissioner shall have exclusive jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court, in the same manner and in the same period as provided by law and by rules of court for appeal from the Court of Industrial Relations to the Supreme Court". *Id.* at § 46, as amended, R.A. No. 772.

[14] In a pre-war case, where an employee suffered an injury because of a third person, for which compensation was due under the Workmen's Compensation Act, the Court of Appeals ruled that the employee had the right to sue for damages against the third person under the Civil Code or against the employer for compensation under the Workmen's Compensation Act. Lobrin v. Singer Sewing Machine Co., C.A. — G.R. No. 5751, Nov. 6, 1940.

Foster Wheeler Corp., supra, can rather induce one to believe that the New Civil Code, specially articles 1711 and 1712, will never apply at all.[15]

The confusion may be clarified by the history and legislative intent behind the pertinent provisions of the New Civil Code and the Workmen's Compensation Act.

The original Workmen's Compensation Act was Act No. 3428, passed by the Philippine legislature on December 10, 1927. The law took effect on June 10, 1928, six months after its approval, and it has persisted ever since, though it has received various amendments later on.

Right at the beginning, the exclusiveness of the rights and remedies emanating from this law was made painfully clear. It was immediately provided that the rights and remedies granted by the Workmen's Compensation Act to an employee by reason of a personal injury entitling him to compensation would exclude all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest kin against the employer under the Civil Code and other laws, because of said injury.[16] The law however gave the courts the jurisdiction to try the cases falling under the Workmen's Compensation Act;[17] the office of the Workmen's Compensation Commission was then non-existent. The exclusiveness of these rights and remedies was confirmed by the Supreme Court in several cases.[18]

The first amendment was committed on December 8, 1930, when Act No. 3812 was promulgated to alter Section 2 (grants for compensation), 6 (liability of third parties). 8 (death benefits), 13 (medical attendance), 16 (partial disability), 22 (payment in lump sum) and 42 (exempting from the law industries with less than ₱20,000.00 gross income). When the same Act 3812 amended section 13 of the Workmen's Compensation Act, the amendment merely attached a proviso fixing the fee of the lawyer whose services were contracted by the laborer, but the jurisdiction of courts to hear and decide cases falling under the Workmen's Compensation Act was left untouched.[19] Significantly, the provision establishing the exclusiveness of the rights and remedies in the Workmen's Compensation Act was not affected.

[15] The published report of **Manalo v. Foster Wheeler** Corp. **supra,** cites as precedents the cases of **Abueg v. San Diego,** 44 O.G. 80 (1946) and **Castro v. Sagales,** 50 O.G. 94 (1953). The citation of the latter decision support the assertion that this case was a precursor preparatory to the ruling in **Manalo v. Foster Wheeler Corp., supra.** But the citation of **Abueg v. San Diego, supra,** is quite immaterial, this case was decided long before the effectivity of the New Civil Code; obviously it cannot be made an authoritative precedent to bolster the argument that the Workmen's Compensation Act is preferred over the New Civil Code was not yet existing.

[16] WORKMEN'S COMPENSATION ACT § 5, (Later amended by R.A. No. 772).

[17] *Id.* at § 31, (later amended by R.A. No. 772).

[18] Abueg v. San Diego, 44 O.G. 80 (1946); Enciso v. Dy-Liacco, 57 Phil. 446 (1932); Murillo v. Mendoza, 66 Phil. 689 (1938).

[19] See WORKMEN'S COMPENSATION ACT § 31.

The second amendment took place on November 20, 1936 with the passage of C.A. No. 210. The provisions amended were sections 3 (applicability), 8 (death benefit), 13 (medical examination), 24 (notice of injury and claim), 25 (form of notice and claim) and 39 (definitions). Again, despite the sweeping changes presented, the provision on the exclusiveness of the rights and remedies in the Workmen's Compensation Act was not disturbed.

In the reformation of the Civil Code, articles 1700 up to 1712, dealing with contracts of labor were added, serving as the first major postwar supplement to the growing labor legislation in the Philippines. On June 20, 1952, R.A. No. 772 was approved. The procedural provisions of the Act were adapted from the statutes of New York, and it introduced a number of basic new features, thereby modernizing the old Workmen's Compensation Act. Before the passage of R.A. No. 772, the Workmen's Compensation Act was enforced administratively by the Bureau of Labor and judicially by the courts. The Bureau of Labor, acting as referee, adjudicated claims for compensation. If the decision of the Bureau did not meet with the approval of any of the parties, the dissatisfied party could bring the case to court.[20] The system worked untold hardship upon poor workers who could not afford long court litigations. R.A. No. 772 sought to correct the defect by creating the office of the Workmen's Compensation Commissioner who could expedite the case with his exclusive jurisdiction to try and decide it, subject of course to appeal.[21]

R.A. No. 772 also liberalized benefits. Under the previous law, employees who received more than ₱42.00 a week were not entitled to compensation. Under R. A. No. 772 they are now entitled. Under the previous law, the maximum weekly compensation was only ₱18.00; under R.A. No. 772 the maximum weekly compensation is ₱35.00. Under the previous law, the maximum compensation in case of death was ₱3,000.00. This has been increased to ₱4.000.00. Furthermore, the coverage of the law has been expanded to include small industries with ₱10,000.00 or more capitalization.

On June 19, 1953, R.A. No. 889 was passed again amending the Workmen's Compensation Act, but the amendment was mostly fund-raising procedure to keep the commission self-operating and provisions for penalties for the violation of the Act.[22]

It can be seen that all these amendments tried to improve almost all the parts of the Workmen's Compensation Act except section 5 which, as we have seen, pertains to the exclusiveness of the rights and remedies granted by the Act. That this provision was never touched indicates its innate importance; it must have possessed an element of sacredness and untouch-

[20] *Id.* at § 31, (later amended by R.A. No. 772).

[21] *Id.* at § 7-A and § 46, as amended, R.A. No. 772.

[22] *Id.*, at § 54, § 55, § 56 and § 57, as amended by R.A. No. 772.

ability that no amendment was ever dared to be impressed upon it. But has section 5 been modified by the New Civil Code so that the exclusiveness of the rights and remedies, which has been preserved by it, has been lost?

Definitely no article in the New Civil Code ever *expressly* repealed section 5 of the Workmen's Compensation Act, with respect to the exclusive character of this section. If someone ever insists that the exclusive character of the rights and remedies embodied in section 5 has been removed by the New Civil Code and that articles 1711 and 1712 of the latter law now intrude in those areas formerly within the exclusive jurisdiction of the Workmen's Compensation Act, then he will have to labor under the difficult process of implied repeal with the further hardship of trying to abolish a provision so revered that it has been inviolate through years of social formant and change. He will have to overcome the grave impositions set down by the Supreme Court: that reapeals by implications are not favored and will not be decreed unless it manifests that the legislature so intended; that for such implication, the repugnancy between the two laws must be irreconciliable, and it must be clear and convincing that it was intended to interfere with and abrogate the former law, unless the reason for the earlier act fully embraces the subject matter of the earlier, or unless the reason for the earlier act is beyond per adventure removed; that every effort must be made to make all acts stand and if, by any reasonable construction, they can be reconciled, the latter act will not operate as to repeal the earlier;[23] and that a subsequent general statute will not be held to repeal a prior statute dealing specifically and in detail with the same subject matter unless there is a clear and necessary conflict between the two.[24]

The Code Commission, in explaining the purpose for the inclusion of articles 1711 and 1712, said that "the present laws on compensation of laborers for accident or illness have been modified so as to *extend* better protection to the laborer.[25] The word "extend" does not mean to destroy the thing which is extended; it simply broadens the thing extended, to make

[23] U.S. v. Palacio, 32 Phil. 208, 216 (1916). See also: Garcia Valdez y. Soteraña Tuason, 40 Phil. 943 (1920); Smith Bell & Co. v. Estate of Maronilla, 41 Phil. 557 (1916); Lichauco & Co. v. Apostol, 44 Phil. 138 (1922); Calderon v. Provincia del Santisimo Rosario, 28 Phil. 164 (1914).

[24] Ynchausti & Co. v. Stanley, 36 Phil. 178, 181 (1917). "Special Laws or charter may not be amended, altered or repealed by a general law, by mere implication." Manila Railroad Co. v. Rafferty, 40 Phil. 224, 228 (1919).

"A special and local statute (or charter) is not repealed by a subsequent general statute unless the intent to repeal or alter it is manifest, although the terms of the general act are broad enough to include the matter in the special statute: A special statute cannot be amended, altered, or repealed by a general law by mere implication." *Id.* at 229.

[25] COMM'N REPORT OF CIV. CODE 14 (1947).

it occupy what was not yet occupied before.[26] Hence it was not the intention of the Code Commission to remove the exclusive character of the Workmen's Compensation Act as expressed in section 5; the articles 1711 and 1712 were just to cover gaps beyond the reach of the Workmen's Compensation Act, and there are quite a number of such gaps, so that the laborer, in the language of the Code Commission, would have "better protection".

This was the intent of the Code Commission and presumably it must also have been the intent of Congress, specially since it adopted the New Civil Code without objecting to this avowed purpose of the Commission.[27] And it is basic that if a statute needs interpretation or construction, the influence most dominant is the purpose and intent of the legislature.[28]

Moreover, the New Civil Code specifies that in matters which are governed by the Code of Commerce and special laws, the deficiency shall be supplied by the provisions of the New Civil Code.[29] This is in consonance with the principle that on a specific matter, a special law shall prevail over a general law, which shall be resorted to only to supply deficiencies in the special law.[30]

This supplementary nature of the New Civil Code, with respect to special laws and particularly to labor enactments, is further stressed by another article therein which prescribes that compensation for workmen and other employees in case of death, injury or illness is regulated by special laws.[31]

As if the New Civil Code is not yet satisfied with this manifestation the pre-eminence of special laws on compensation for industrial death, injury or illness is sharpened more by a contrast when in the same breath the same article distinguishes that rules governing damages laid down in *other* laws shall be observed in so far as they are not in conflict with the

[26] To **extend** means "to stretch or draw out, to cause to reach or continue as from point to point; as to extend a line of battle from hill to river; to **extend** a cord across a street; hence to lengthen prolong either in space or time; to carry forward; as to **extend** a railroad; to **extend** a visit." See 1 WEBSTER'S NEW INTERNATIONAL DICTIONARY 775 (1918).

[27] In construing provisions in an official revision or compilation of the statute of a state, courts have often referred to the report of the revisory commission for aid. Wipperman Mercantile Co. v. Jacobson, 133 Minn. 326, 158 N.Y. 606 (1916). See also: Salmon v. Central Trust & Savings Bank, 157 Minn. 369, 196 N.W. 468 (1923); People v. Conway, 97 N.Y. 62, 69 (1884).

[28] De Jesus v. City of Manila, 29 Phil. 73 (1914). See also: Borromeo v. Mariano, 41 Phil. 322 (1921); People v. Concepcion, 44 Phil. 126 (1922); U.S. v. Toribio, 15 Phil. 85 (1910).

[29] Art. 18 NEW CIVIL CODE.

[30] Leyte A & M Oil Co. v. Block, 52 Phil. 429 (1928). See also Ramos v. De la Rama, 15 Phil. 554 (1910); Enriquez v. Sun Life Assurance Co., 41 Phil. 269 (1920).

[31] "The rules under this Title are without prejudice to special provisions on damages formulated elsewere in this Code. Compensation for workmen and other employees in case of death, injury or illness is regulated by special laws. Rules governing damages laid down in other laws shall be observed insofar as they are not in conflict with this Code." Art. 2196 NEW CIVIL CODE.

New Civil Code.[32] Again, in another article, the same code further declares that because relations between capital and labor are impressed with public interest so that contracts between them must yield to the common good, their contracts must be subject to special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.[33]

These articles of the New Civil Code explaining its relationship with special laws on labor does not create that irreconciliable repugnancy between statutes which is a *sine qua non* for implied repeal. Neither in the fact and substance of the New Civil Code is there any congressional intent to make a repeal and such intent is absolutely necessary to justify a conclusion that there is an implied repeal.[34]

Rather, the words used by the New Civil Code reveal quite lucidly the place intended for the New Civil Code, that it is merely a supplement to supply deficiencies in special legislations, unless the latter allow their concurrence with the New Civil Code, regarding compensation for industrial injuries, death or illness. Whatever doubt remains after these assertions of the New Civil Code was extinguished by the advent of R.A. No. 772. On June 20, 1952, about two years after the New Civil Code had taken effect, R.A. No. 772 became operative and among the innovations it brought was one notable change: an amendment of section 5 of the Workmen's Compensation Act which, as we have repeatedly seen in the original Act, granted a mantle of exclusiveness upon the rights and remedies of the same Act.

The amendment of this section 5 is particularly striking. This section, we mentioned before, was continuously unimpaired through the series of amendments imposed upon the old Workmen's Compensation Act, since its passage on December 10, 1927. Now it was its turn to be modified. Yet, the first of its two paragraphs, which was responsible for the exclusive character of the rights and remedies of the Act, was again untouched; the amendment was merely on the second paragraph which referred to the effectivity of the Act upon labor contracts to be performed outside the Philippines. While only the second paragraph received alteration, yet

[32] *Ibid.*

[33] "The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor, and similar subjects." Art. 1700 NEW CIVIL CODE.

[34] "The implied repeal of a prior by a subsequent law of Congress, must depend upon the intention and purpose of Congress in enacting the latter." Tan Te. v. Bell, 27 Phil. 354 (1914).

Whether or not an act repeals another impliedly is a matter of legislative intention, to be ascertained by an examination of both statutes, and in the light of reason, purpose, and object of both." U.S. v. Tan Oco. 34 Phil. 722 (1916).

Congress deemed it wise that R.A. No. 772 should promulgate all over again the whole section 5, both its impaired and unimpaired paragraphs.[35]

Act 772 could have merely stated the second paragraph, without including the unimpaired first paragraph. In fact, such abbreviated technique has been almost a habit in Congress, as when sec. 10 of Act No. 3812, in amending section 31 of the Workmen's Compensation Act, merely recited the amendatory proviso without including the unaffected parts of section 31.[36]

When Congress, however, embodied the first paragraph in question in the amendment in R.A. No. 772, despite the fact that this paragraph was not the subject of modification one cannot escape the deduction that the re-statement of this first paragraph amounted to a continuation of its effectivity. As shown by unquestioned jurisprudence, provisions of the original act or section, which are repeated in the body of the amendment either in the same or equivalent words, are considered a continuation of the original law;[37] this rule of interpretation is applicable even though the original act or section is expressly declared to be repealed;[38] the provi-

[35] "Exclusive right to compensation. — The rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code and other laws, because of said injury.

"Employers contracting laborers in the Philippine Islands for work outside the same may stipulate with such laborers that the remedies prescribed by this Act shall apply exclusively to injuries received outside the Islands through accidents happening in and during the performance of the duties of the employment; and all service contracts made in the manner prescribed in this section shall be presumed to include such agreement." WORKMEN'S COMPENSATION ACT § 5, (later amended by R.A. No. 772).

R.A. No. 772, however, merely amended the second paragraph of the aforecited section, though it recited the entire section, both the altered and unaltered paragraphs. For the full citation of this section, as amended, please see footnote 12.

[36] Section 10 of Act 3812 just recited the amendatory proviso without including the unaffected parts of section 31 of the Workmen's Compensation Act:

"Section thirty-one of Act Numbered Thirty-four hundred and twenty-eight is hereby amended by adding at the end of said section the following proviso:

Provided, That in case a laborer who suffers an accident or contracts an illness comprised within the provisions of section two of this Act, or his dependents, contract the services of a lawyer or other persons to help him or direct him in his claim for compensation against his employer before the office of the Director of Labor, the fees of said lawyer or persons shall not be more than five per cent of the total sum which said injured or sick laborer or his dependent in case of his death shall receive by way of compensation; but if his services shall take place before a court of justice, his fees shall not be in excess of ten per centum of said sum, and any person who, in violation of this proviso, makes an excessive charge, shall be punished by a fine of not more than two hundred pesos" Act 3812 § 10.

[37] Posadas v. National City Bank, 296 U.S. 497 (1936); Great Northern Ry. Co. v. United States, 155 Fed. 945 (CCA 8th, 1907); Allgood v. Sloss-Sheffield Steel & Iron Co., 196 Ala. 500, 71 So. 724 (1916); People, use of State Board of Pharmacy v. Zito, 237 Ill. 434. 86 N. E. 1041 (1908); Altamount v. Baltimore & O. R. Co., 348 Ill. 339, 180 N.E. 809 (1932).

[38] Ex parte Allen, 91 Ohio 315, 110 N.E. 535 (1915).

sions of the original act or section re-enacted by the amendment are held to have been the law since they were first enacted and the provisions introduced by the amendment are considered to have been enacted at the time the amendment took effect.[39]

Assuming therefore that the New Civil Code took away the exclusive character of the rights and remedies under the Workmen's Compensation Act, this exclusiveness was revived by a re-enactment of the same in R.A. No. 772. The correctness of this assumption cannot even be admitted; the essential condition for implied repeal (or amendment), which is the clear and convincing proof for such repeal or amendment, is not shown; there is no implied repeal; the original conception in section 5 of the Workmen's Compensation Act must be retained. In the solemn phrases of this section, the rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representatives, dependents, or nearest kin against the employer under the Civil Code and other laws, because of said injury.

Only one inference survives. The New Civil Code will apply where the Workmen's Compensation Act leaves off — in those industrial cases where the employer involved has capital, for purpose of gain, less than ten thousand pesos, whose enterprise, industry, business, trade occupation, or profession is not hazardous or deleterious to employees.[40]

[39] Great Northern Ry Co. v. United States, 155 Fed. 945 (CCA 8th. 1907); In re Fuetl, 247 Fed. 829 (1917); Perry v. Bogarth, 261 Mich. 526. 246 N.W. 214 (1933); Ely v. Holton, 15 N. Y. 595 (1857); In re Prime's Estate, 136 N.Y. 347, 32 N.E. 1901 (1893).

The applicability of the American decisions cited in this and the next two preceding footnotes and footnote 27 is settled by various judgments of our Supreme Court. The Workmen's Compensation Act and particularly the amendatory R.A. No. 772, which has continued the effectivity of the first paragraph of section 5 of the former law, are basically American in origin. Hence, American jurisprudence on the matter is quite fitting. As our Supreme Court opined: "Many of the laws of the Islands can only be construed and applied with the aid of the common law from which they are derived, and to breathe the breath of life into some of the institutions introduced into these Islands under American sovereignty, recourse must be had to the rules, principles, and doctrines of the common law." U.S. v. Cuna, 12 Phil. 241 (1908). See also Alzua v. Johnson, 21 Phil. 308 (1912); Reyes v. Wells, 54 Phil. 102 (1929).

[40] "Law applicable to small industries. — All claims for compensation by reason of an accident in an enterprise, industry or business carried on or in a trade, occupation, or profession exercised by an employer for the purpose of gain, whose capital amounts to less than ten thousand pesos and is not hazardous or deleterious to employees, shall be governed by the provisions of Act Numbered Eighteen hundred and seventy-four and its amendments; Provided, however, That the following enterprises or establishments shall be among those considered hazardous or deleterious to employees:

(1) Any business for the transportation of persons or goods, or both;

(2) Any factory, establishment, or shop where machinery is used;

(3) Any factory, establishment, or shop where the employee is exposed to dust or other particles of matter, fumes, gases, and other chemical substances;

(4) Plants or establishments for the making or manufacture of fireworks, dynamite, amunitions, and similar things or articles;

In these cases, the New Civil Code and the Employer's Liability Act (Act No. 1874) will concur, since the Workmen's Compensation Act specifically provides that the Employer's Liability Act will also govern these cases.[41]

True, as indicated in articles 18, 1700 and 2196, *supra*, the New Civil Code gives preference to the regulations set down in special labor laws. But this declaration simply means that whatever is contemplated in special labor laws supersedes the New Civil Code. Hence, if these labor laws make themselves exclusive, like the Workmen's Compensation Act, they shall be exclusive; conversely, if they make themselves co-extensive with the New Civil Code, this system shall also prevail.

But unlike the Workmen's Compensation Act, the Employer's Liability Act has no provision barring the claimant from bringing his claim under any other applicable law. The Employer's Liability Act merely *extends* the liability of the employer and creates new rights of actions in favor of the employees; at the same time, common law defenses have been made available in actions brought under the Act, defenses which did not exist at all in this country under the Civil Code; to borrow a deduction from our Supreme Court, it is quite clear that it was not intended that all rights to compensation and of action against employers by injured employees or their representatives must be brought under and be governed by the Act.[42]

If the claimant recovers under one of these two laws, however, he cannot ask for the same compensation under the other, since the cause of action, the payment of damages, is already gone. In fact, under the Employer's Liability Act, the employer may ask for a proportionate mitigation of the claim, if the employee is proved to have been benefited, for the same injuries, from insurance fund or relief society to which the employer has made contributions to indemnify such injuries.[43] Under the same principle therefore, when the employee has already received his com-

(5) Employment for circus, boxing, football, basketball, wrestling, racing, and similar sports; and

(6) Fishing, lumbering, and mining. WORKMEN'S COMPENSATION ACT § 42, as amended, Act No. 3812 § 14 and R.A. No. 772 § 23.

[41] The Employer's Liability Act does not apply, however, to agricultural worker's and domestic servants. See Employer's Liability Act § 5 (Act No. 1874). But articles 1711 and 1712 of the New Civil Code are extendible to agricultural workers, because of the all-embracing phraseology employed in these articles; and article 1689 up to article 1699 of the same code are supposed to deal with domestic servants.

[42] Cerezo v. Atlantic, Gulf & Pacific Co., 33 Phil. 425, 441-42 (1916). Indemnifying an employee for personal injuries for which compensation may be recovered under the provisions of this Act or who shall have contributed to any relief society for the same purpose may prove in mitigation of the damages recoverable by an employee under the provisions of this Act such portion of the pecuniary benefit which has been received by such employee from any fund or society on account of such contribution of said employer as the contribution of such employer to such fund or society bears to the whole contribution thereto." EMPLOYER'S LIABILITY ACT § 7.

[43] *Ibid.*

pensation under the New Civil Code or Employer's Liability Act, he should not be allowed to file an action for the same purpose under the other law. The employer will be paying twice, which is grossly unfair.[44]

In making the Workmen's Compensation Act predominant over the New Civil Code, Congress unconsciously committed quite an illogical omission, which is an unfortunate disadvantage to the employee as well as the employer. Under this statute, the maximum weekly compensation is thirty five pesos and the maximum compensation that can ever be awarded, and it is awarded only to relieve in a small measure the death of an employee, is four thousand pesos. But the New Civil Code sets no limit to the amount of compensation payable thereby. It merely declares that damages arising from contract, and damages in industrial death, injuries or illness are expressly made contractual, shall be, if the obligor acted in good faith, those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted[45] and in case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.[46]

Hence, we come to the ironic anomaly that an employer, with a capital less than ten thousand pesos and whose enterprise, industries, business, trade, occupation or profession is not hazardous or deleterious to employees, is made to suffer heavier burden, precisely because of the modesty of his capital and of his prudence to choose a safer mode of living. He is being punished for his modest property, rather his poverty, and his prudence. When the employer, in turn, has capital in excess of ten thousand pesos or when the employment is deleterious or hazardous to the employee, the latter gets a minimal compensation not exceeding, in

[44] See WORKMEN'S COMPENSATION ACT § 8, § 10, § 12, § 13, §14, § 16, § 17, § 18, § 19, § 20, § 21,§ 22. § 23, § 45.

[45] Art. 2201 NEW CIVIL CODE.

[46] *Ibid.* Note that the damages mentioned in article 2201 are only actual or compensatory. But the court, on the strength of the evidence adduced, may add attorney's fees and expense of litigation in accordance with article 2208 or other kinds of damages allowed by the code, such as moral damages, etc. Of course, also on the strength of evidence adduced, the court may diminish the amount asked for, under article 2215:

"In contracts, quasi-contracts, and quasi-delicts, the courts may equitably mitigate the damages under circumstances other than the case referred to in the preceding article, as in the following instances:

"(1) That the plaintiff himself has contravened the terms of the contract;

(2) That the plaintiff has derived some benefit as a result of the contract;

(3) In cases where exemplary damages are to be awarded, that the defendant acted upon the advice of counsel;

(4) That the loss would have resulted in any event;

(5) That since the filing of the action, the defendant has done his best to lessen the plaintiff's loss or injury."

The court may also mitigate the damages under Art. 1172 of the same code: "Responsibility arising from negligence in the performance of every kind of obligation is also demandable but such liability may be regulated by the court, according to the circumstances."

any case, four thousand pesos, and the maximum amount of four thousand pesos is given only after his death, notwithstanding the stronger financial capacity of his employer or the grave risk taken in the deleterious or hazardous employment.

Because of the greater freedom to demand under the New Civil Code a bigger idemnity from employers of lesser means whose line of business is not hazardous or deleterious, it is not sufficient anymore to justify the weak benefit of four thousand pesos (or less) allowed by the Workmen's Compensation Act, by merely quoting a previous conclusion that the purpose of this limitation is to discourage employees who may otherwise be tempted by a higher sum to invite accidents or illness through disregard of their safety and health.[47] The New Civil Code has already relaxed this rigid check in connection with small industries. Reform is imperative in either or both of these enactments, if we have to maintain, as we should maintain, a sensible position of fairness in our laws.

[47] "On the other hand, it was never intended by the most ardent advocates of workmen's Compensation to give full remuneration for loss of wages, because this would remove such of the inducement of workmen to exercise care and caution, and would be an inducement to malinger." Continental Casualty Co. v. Haynie, 51 Ga. 650, 181 S.E. 126 (1935).