

of libel committed by the single publication of an article depended on the number of persons libeled thereby, such crimes should be merged to constitute a complex crime under the provisions of Article 48¹⁸ of the Revised Penal Code. (*People v. Atencio*, C. A.-G. R. No. 11351-R, 11352-R, 11353-R, Dec. 14, 1954.)

INTERNATIONAL LAW

THE RULES OF CIVIL LAW CONCERNING INDUSTRIAL ACCESSION ARE NOT INTENDED TO REGULATE ACCESSIONS BETWEEN PRIVATE PERSONS AND A SOVEREIGN BELLIGERENT, NOR TO APPLY TO CONSTRUCTIONS MADE EXCLUSIVELY FOR PROSECUTING A WAR, WHEN MILITARY NECESSITY IS TEMPORARILY PARAMOUNT.

The Republic of the Philippines as well as defendants are appealing from the decision of the Court of First Instance of Batangas in an expropriation proceeding filed by the Republic for the expropriation of a large area of land located in Lipa City, upon which the Armed Forces of the Philippines constructed and now operates and maintains the Fernando Air Base.

The land in question was, during the later part (1943) of the Japanese occupation, occupied by enemy forces and converted into a campsite and airfield. The houses along the National Highway and the provincial roads were destroyed, and the fruit trees, orchards, and sugar crops cut down; in place thereof, the Japanese forces built concrete airstrips, concrete taxi-ways, dugouts, canals, concrete ramps, ditches, gravel roads, and air-raid shelters.

The battle for liberation added to the devastation of the area in question. Upon liberation, the United States Army took possession of the airfield; and on July 4, 1946, the air base was handed over by the U.S. Government to the Armed

¹⁸ "When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

Forces of the Philippines. The Philippine Army then took steps to negotiate the purchase of the area for the purpose of constructing thereat a permanent air base. The extrajudicial negotiations, however, were unsuccessful, for the great majority of the landowners did not want to accept the price offered by the government. Hence, the government decided to expropriate the land and accordingly filed the complaint for expropriation.

None of the defendants questioned the purpose of the expropriation in their respective answers. The question to be decided boils down to the resolution of whether the improvements made on the land by the Japanese during the enemy occupation should be included in the determination of the just compensation to be paid to the landowners. Defendants insist that a belligerent occupant could not take private property without just compensation; that the Japanese forces were possessors of their lands in bad faith; and that therefore, the improvements constructed thereon by them should, under our civil law, belong to the owners of the lands to which they are attached.¹⁹

HELD: The defendants' argument is untenable. The rules of the Civil Code²⁰ concerning industrial accession were not designed to regulate relations between private persons and a sovereign belligerent, nor intended to apply to constructions made exclusively for prosecuting a war, when military necessity is temporarily paramount. While "private property may not be confiscated,"²¹ confiscation differs from the temporary use by the enemy occupant of private land and buildings for all kinds of purposes demanded by the necessities of war.²²

¹⁹ "He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity." Art. 449, New Civil Code.

²⁰ Arts. 445 to 456, New Civil Code.

²¹ Art. 46 of The Hague Regulations.

²² II Oppenheim, *International Law*, Lauterpacht Edition, sec. 140. Thus, the U.S. War Department Rules of Land Warfare of 1940 provide that "the rule requiring respect for private property is not violated through damage resulting from operations, movements, or combats of the army; that is, real estate may be utilized for marches, camp sites, construction of trenches, etc. Buildings may be used for shelter for troops, the sick and wounded, for animals, for reconnaissance, cover defense, etc. Fences, woods, crops, buildings, etc. may be demolished, cut down, and removed to clear a field of fire, to construct bridges, to furnish fuel if imperatively needed for the army." (Quoted in Hyde, *International Law*, Vol. II, p. 1894).

Consequently, the Japanese occupant is not regarded as a possessor in bad faith of the lands taken from the defendants and converted into an airfield and campsite; its use thereof was merely temporary, demanded by war necessities and exigencies. But while the defendants remained the owners of their respective lands, the Republic of the Philippines succeeded to the ownership or possession of the constructions made thereon by the enemy occupant for war purposes, unless the treaty of peace should otherwise provide; and it is under no obligation to pay indemnity for such constructions and improvements in these expropriation proceedings. (*Republic v. Lara et al.*, G. R. No. L-5080, Nov. 29, 1954.)

LABOR LAW

COURT OF INDUSTRIAL RELATIONS: ALTHOUGH CIR HAS POWER TO AWARD RETIREMENT GRATUITY, IT MUST, BEFORE MAKING SUCH AWARD, FIRST INQUIRE INTO HOW MUCH THE BUSINESS OF THE EMPLOYER CAN AFFORD TO GIVE BY WAY THEREOF.

Prior to August, 1950, the National Labor Union made various demands upon J. P. Heilbronn Company, one of which (No. 8) is that involved in the present case and reads as follows:

"Retirement gratuity based on one month's salary for every year of service to the following: (a) those attaining 60 years of age; (b) those incapacitated for work due to illness; and (c) those who resign after ten years of satisfactory service."

The demands were referred to the CIR, and through one of its associate judges, a decision dated Aug. 21, 1950 was rendered granting the demands and ordering the company to present to the court a pension or retirement plan within 90 days after receipt of the decision. Upon motion for reconsideration, the court sitting *en banc*, affirmed the decision but

with the modification that the presentation of the pension or retirement plan be held in abeyance until Congress could enact a law on that matter in order to establish a permanent policy and avoid confusion, such legislation being then expected because of the approval of R. A. No. 532.²³

But as two years passed without the expected legislation being enacted, the court at the instance of the labor union entered an order dated Jan. 6, 1953, requiring the company to present within 90 days the retirement plan called for in the original decision of Aug. 21, 1950.

The present petition for *certiorari* was filed to have the said order set aside, the petitioners contending that the CIR committed a serious abuse of discretion and acted without authority in promulgating this last order.

HELD: The contention of the petitioner is that until such time as the Philippine Congress enacts a law requiring the payment of pensions, the CIR has no power to require an employer to pay a pension to his employees.

This court has already held that such power is conferred upon that Tribunal by Com. Act. 103, this on the theory that pension payments and retirement plans are embraced in wages and conditions of payment and are therefore proper subjects of collective bargaining between employers and employees.²⁴

But while the power of the CIR to allow retirement gratuity is thus recognized, it should not be overlooked that the power is expressly made subject to the limitation that the award be reasonable and compatible with the employer's right to a reasonable profit on its capital.²⁵ The limitation necessarily imposes upon the court the duty of inquiring into the question of how much the business of the employer can afford to give to the employees by way of pension or gratuity. It does not appear that such inquiry has been undertaken in the present case since no evidence was required on the union's demand for gratuity or pension. Therefore, for a fair settlement of the present controversy, a new trial is in order. (*J. P. Heil-*

²³ R. A. 532 provided for the creation of a commission to make a comprehensive study of a pension plan for industrial employees and laborers.

²⁴ *Philippine Education Co. Inc. v. Court of Industrial Relations et al.*, G. R. No. L-5679, November 28, 1953.

²⁵ See 12 A. L. R. 2d 275 for American decision on this point.