

REFERENCE DIGEST

LABOR LAW — WILL THE NATIONAL APPRENTICESHIP ACT OF 1957 EFFECTIVELY CARRY OUT THE PROGRAM OF TRAINING SKILLED WORKERS? — In 1957, Congress passed a bill entitled: National Apprenticeship Act of 1957, otherwise known as Republic Act 1826. Two promising law students from the MLQ School of Law, made an intelligent analysis of Republic Act 1826, with special emphasis on its impact on the Philippine labor scene.

The article contains a history of apprenticeship as a system and as a piece of legislation. Likewise, a comparative study of Philippine and foreign apprenticeship system is made. The authors discuss the purpose and coverage of the Act — the kinds of establishment subject to the operation of the Act, and the exceptions to its coverage. They also give a useful and enlightening analysis of the pertinent points of R.A. 1826 from which legal questions are sure to come out in the future, namely; parties to the apprenticeship, requisites, term, wage, hours and condition, settlement of questions arising from apprenticeship relationship and appeal from an order of the Secretary of Labor, apprenticeship program and standards, and the number of apprentices. The dissertation points out the role that apprenticeship will play in collective bargaining, shows the advantages of the legislation, and also gives an answer to the vexing problem of whether injuries to the apprentice are compensable.

The authors offer their general observation of the National Apprenticeship Act, point out its defects and shortcomings, particularly noting that the law provides no penal sanction for its violation, and that it fails to provide funds to carry out the functions and purposes of the Act after the first year. They end the article with a practical conclusion. (Magtanggol Gunigundo & Celso Mariano, *The National Apprenticeship Act of 1957 — Its on the Philippine Labor Scene*, VII MLQ LAW QUARTERLY No. 2 at 105-152 (1957). ₱6.00 a year at MLQ, Quiapo, Manila. This issue also contains: Brevia & Tañada, *The Presidential Electoral Tribunal Act.*)

ADMINISTRATION OF JUSTICE — LEARNING FROM THE ENGLISH AND AMERICAN WAY OF ADMINISTERING JUSTICE. — The need for emphasis upon the protection of individual rights is at an endless sort of a tug-of-war, *vis a vis* the demand for efficiency in judicial administration. Judge Piccio makes some observations on the English and American judicial system,

with a view of showing us such of their characteristics that work, besides accuracy, for speed and certainty, even flexibility.

The author follows the gradual formation of the judicial process from the Greeks, through the Romans, then to England. Likewise in his presentation of the evolution of courthouses, he makes mention of the Courts of the Shire and the Hundred, Manorial Courts, Courts Merchant, and the concept of jurisdiction prevailing in these courts. He gives a picture of the composition of present day English Courts, and the striking characteristics inherent among the English people which account for the speed and certainty of English Justice. Judge Piccio goes on to say that the prime quality of the English procedure is its flexibility. He traces the development of *Stare Decisis*, separation of the judicial from the executive function of the government, judicial review, and judge-made-law.

The article through an accompanying judicial chart discusses the respective positions, extent and chief features of the federal judicial system of the United States, and the defect of *trial de novo* of cases coming from inferior courts which the Philippines inherited from the American Judicial System. It also allows the readers a glimpse at how justice or judges function in the Soviet Union under the so-called "Socialistic Justice."

Judge Piccio concludes by pointing defects in our legal system and offering possible solutions in the light of time-tested judicial practices prevailing in English and the American Judicial Systems. (Edmundo S. Piccio, *Some Reflections From the English and the American Judicial Systems*, XXIII THE LAWYERS JOURNAL No. 2 at 41-48 (1958). ₱2.00 at Francisco College, Baesa, Quezon City. This issue also contains: Calderon, *The Foundations of Industrial Peace.*)

CONSTITUTIONAL LAW — ECONOMIC CONTROLS AND THE CONSTITUTION; STRIKING A BALANCE IN GOVERNMENT REGULATION OF PRIVATE AND PUBLIC CREDIT; EXCHANGE CONTROL AND THE SOCIAL INTEREST. — With the advent of the industrial revolution, complexities of life so increased that the individual left alone became a helpless victim in his new social and economic environment. The State became a positive force for social service. It is the new conception of justice which was embodied in our Constitution. The preamble of the Constitution states: "the Filipino people, imploring the aid of Divine Providence in order to establish a government that shall x x x promote the general welfare x x x under a regime of justice, liberty and democracy, do ordain and promulgate this Constitution." And Art. II, Sec. 5 also states: "the promotion of social justice to insure the well being and economic security of all the people should be the concern of the State."

The case in favor of economic planning and control rests on the following counts:

1. For justice in distribution we clearly have to summon the forces of the State.
2. The market mechanism does not humanize the wage relation. The State is much more certain protection.
3. The market economy is unstable. The present unanimity is in favor of State control of money.
4. Foreign trade must be regulated by the state.
5. The market economy is ineffective in coping with the major changes: State action to speed the mobility of resources is clearly needed.
6. The market economy is wasteful.
7. The merits of the market depend on the existence of competition and perfect competition is rare. Only State action can assure competition.

In the Philippines, the emergency caused by World War II and particularly the unbalanced trade caused by free trade relationship between the U.S. and the Philippines which made us very dependent on the former necessitated the adoption of controls in our economy such as the Exchange Control, the Import Control, the Export Control and Price Control. However these controls were not meant to stay permanently. They were merely adopted as temporary expedients for a period of emergency.

STRIKING A BALANCE IN GOVERNMENT REGULATION OF PRIVATE AND PUBLIC CREDIT. — Resort to public borrowing is brought about the insufficiency of government funds to be used for economic development. To raise these needed funds, the government has only three choices, namely, (a) postpone the execution of developmental projects, (b) borrow money from abroad, (c) sell bonds to the banks. The last which is the method of resorting to national credit, has been called "deficit spending". And because of the fact that the stability of the currency is directly related to the sum of money supply flowing from the use of public and private credit, any emphasis on the former calls for the corresponding restriction on the latter if the stability of the currency is to be maintained. The considerable use of the public credit has consequently resulted in the marked limitation of private credit. This is not conducive to sound economic growth. The following suggestions are, therefore, offered:

1. Private credit should be liberalized by granting better loan terms;
2. Public borrowing must be held at the minimum to avoid the danger of inflation.
3. In granting private loans and in using proceeds from bond issues, priority should be given to productive projects;
4. Sinking funds should be established to cushion the impact of maturing public debts.

EXCHANGE CONTROL AND THE SOCIAL INTEREST. — Exchange control

deals with all forms of international economic transactions, services and capital movements as well as commodity trade. It involves the centralization of all foreign exchange operations in a single institution. Likewise all demands for foreign currency must be met from this central pool. In other words exchange control means the regulation of the flow of dollars in order to conserve the buying power of the peso. The law on exchange control is embodied in the Central Bank Act and as a supplement, the Foreign Exchange Tax Law was passed.

The imposition of controls is not entirely incompatible with the doctrine of laissez faire because the latter has never meant the complete absence of government control over economic activities. The controlled economy was established not for the purpose merely of restraining the economic activity of the people. At the back of this lies a deeper meaning — *salus populi est suprema lex*.

However exchange control often leads to favoritism to particular industries or companies and are particularly likely to divert trade from its natural channels and upset existing trade restrictions. Nevertheless in the case of *People vs. Escorde*, the Supreme Court said, "It requires no effort to understand that unless the exportation of currency is curtailed, the value of the peso in terms of other currencies cannot be maintained. How far the limitation should go may give rise to honest differences of opinion but the power to restrict the export of Philippine currency is undoubtedly there. (Francisco T. Andres, Pablo S. Bañong, Samuel T. Bañez, *Symposium Articles on Economic Controls in a Constitutional Democracy*, 32 Phil. L.J. No. 5, at 597 — 631 (1957). P2.50 at U.P., Diliman, Q.C. This issue also contains: Romualdez, *Controls in Philippine Economy*; Guevara, *Rights, Powers and Liabilities of Foreign Corporations in the Philippines*.)

AGENCY — UNDISCLOSED AGENCY IN THE PHILIPPINES. — If A the agent of P contracts with T, in his own name but really for the account of P, the problem arises: May P sue or be sued by T directly on the contract? The Philippine solution is expressed in Art. 1883 of the New Civil Code:

"If an agent acts in his own name, the principal has no right of action against the persons with whom the agent has contracted; neither have such persons against the principal.

"In such case the agent is the one directly bound in favor of the person with whom he has contracted, as if the transactions were his own, except when the contract involves things belonging to the principal.

"The provision of this article shall be understood to be without prejudice to the actions between the principal and agent." Under this legal provision, direct suit between P and T is clearly not allowed except only when the contract involves things belonging to P. This is so because there would be no representation and the agent acts on his account. Further-

more the third person, in contracting with the agent, has relied exclusively upon his business standing and financial ability.

But if in our problem A's contract with T involves things belonging to P, P may sue and be sued by T directly on the contract despite the absence of formal representation by A. This exception is on the theory that P is the real party in interest (the obligations under the contract falling on him, he should have the rights as well), or otherwise to prevent prejudice or fraud against third persons.

Despite the exception provided in Art. 1883, the Supreme Court has intimated that the application of the exception depends upon the good or bad faith of the purchaser.

In this jurisdiction the third person can sue both the principal and the agent in those cases where direct suit by the third person against the principal is allowed. (Cecilio L. Pe, *Undisclosed Agency in the Philippines: A Comparative evaluation*, 8 U.S.T. Law Rev. No. 4, at 351-359 (1958). P2.00 at U.S.T. España, Manila. This issue also contains: Molina, *On Freedom of Philippine Mail During the Spanish Regime.*)

LEGISLATION

LABOR LAW: When Congress passed Republic Act 1052, the nation's policy-making body laid down the rule regarding the termination of employment without a fixed term. In line with the principle embodied in said law and following the established traditions of the country the authors¹ of Senate Bill 278 in their explanatory note felt that, despite its laudable economic and social objectives, it was inadequate to cope with existing conditions where employment opportunities are scarce and trade unionism is still in the development stage.

For this reason, our lawmaking body enacted into law Republic Act 1787 designed to remedy the failure of Republic Act 1052 to define and provide the causes under which an employer may dismiss an employee² to prevent the latter from being placed in an unpredictable and very difficult situation.³

Introduced in 1955 when Congress turned out several measures aimed at the improvement of the social conditions of the Philippines,⁴ Republic Act 1787 was passed on third reading by the Senate in the same year⁵ but would have died a natural death had the President not certified to its urgency.⁶ It was passed without amendment by the House on May 23, 1957,⁷ the last day of the regular session of the Third Congress.

While the old law permitted the termination of employment by either the employer or employee with or without just cause provided one month advance notice was given, the amendatory law allows the severance of employment at any time for a just cause and provides for different periods when written notice is to be given by the employer and employee if the termination is without just cause. What are just causes are defined and enumerated by the law. It also seeks to distinguish termination of employment from suspension of employment.⁸

The law definitely is sound. There can be no mistake as to the intention of Congress to pronounce a clear-cut and equitable policy⁹ to govern the separation from the service of minor employees. It has put more teeth

¹ Senators Primicias, Montano and Magalona.

² 2 SENATE CONGRESSIONAL RECORD, 1170 (1955).

³ EXPLANATORY NOTE, Senate Bill 278.

⁴ 5 Ateneo L. J. 76.

⁵ HISTORY OF BILLS AND RESOLUTIONS, HOUSE OF REPRESENTATIVES, 606 (1957).

⁶ It was certified on May 3, 1957, *ibid.*

⁷ *Ibid.*

⁸ EXPLANATORY NOTE, Senate Bill 278.

⁹ 2 SENATE CONGRESSIONAL RECORD 1170 (1955).