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-*

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[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.

bronn Company v. National Labor Union, G. R. No. L-6454, Nov. 29, 1954.)

WORKMEN'S COMPENSATION LAW: AN INDEPENDENT CONTRACTOR WHO IS FREE TO DO THE WORK ACCORDING TO HIS OWN METHOD WITHOUT BEING SUBJECT TO CONTROL BY THE COMPANY WITH WHOM HE MADE A CONTRACT FOR THE PERFORMANCE OF SUCH WORK IS LIABLE FOR THE DEATH OF A LABORER EMPLOYED BY SUCH CONTRACTOR, WHO DIED WHILE PERFORMING THE WORK UNDER WHICH HE WAS EMPLOYED.

The Philippine Manufacturing Company entered into a contract with one Garcia for the painting of a water tank. Under the same contract the supervision of the work was to be taken care of by Garcia. For this purpose, he employed a laborer who died as a result of a fall while painting the water tank.

There is now a controversy as to whether the compensation due was recoverable from the Philippine Manufacturing Co. or from Garcia as an independent contractor. The deputy commissioner[26] decided in favor of the contractor and ordered the company to pay the compensation due. Upon a denial of its motion for reconsideration, the company filed this present petition for *certiorari.* Garcia contends that he is not an independent contractor.

HELD: It is clear that Garcia was an independent contractor, for while the company prescribed what should have to be done, the performance and supervision thereof was left entirely to him; he was therefore free to do the job according to his own method without being subject to control by the company. The deceased was working for an independent contractor and met his death while doing work which was not in the usual course of the business of the company.[27] Hence, such payment rests with his employer, Garcia. (*Philippine Manufacturing Co. v. Eliano Garcia et al., G. R. No. L-6968,* Nov. 29, 1954.)

[26] The Workmen's Compensation Commissioner has 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 the Rules of Court for appeal from the Court of Industrial Relations to the Supreme Court. (Sec. 46, Act No. 3428, otherwise known as the *Workmen's Compensation Act.*) But the hearing of the claim may be delegated to and held before any referee or deputy commissioner. (Sec. 49, *Id.*)

POLITICAL LAW

CONSTITUTIONAL LAW: A LAW WHICH IMPOSES AN OBLIGATION UPON A BUILDER TO REQUIRE HIS CONTRACTOR TO FILE A BOND TO SECURE THE PAYMENT OF WAGES TO LABORERS IS NOT AN IMPAIRMENT OF THE FREEDOM TO CONTRACT BUT A VALID EXERCISE OF POLICE POWER BY THE STATE.

The Standard Vacuum Company engaged the services of one Jose Cabigao as contractor for the building of a service station. The contractor was paid in full after the construction of the service station but the former, in his turn, did not fully pay the wages of the laborers. The laborers brought this action to recover from the contractor and the company the sum due them, with interests. The company questions the constitutionality of Act 3959 upon which the plaintiffs based their claim.

Said Act imposes upon any person, firm, or corporation carrying on any construction or work the obligation to require the contractor to furnish a bond in a sum equivalent to the

[27] "In other words, when the law makes the owner of the factory the employer of the laborers employed therein notwithstanding the intervention of an independent contractor, it refers to laborers engaged in carrying on the usual business of the factory, and not to the laborers of an independent contractor doing work separate and distinct from the usual business of the owner of the factory.

"The reason for the distinction and the rule is easy to understand. If the owner of a factory were not liable for the injuries sustained by the employee of an independent contractor engaged in the usual business of the owner, the owner of the factory by the mere subterfuge of an independent contractor could relieve himself of all liability and completely defeat the purposes of the law. On the other hand, to make the owner of the factory liable for injuries to the employees of an independent contractor not engaged in the usual business of the owner would be to make him liable for injuries to workmen over whom he has no control." (*De los Santos v. Javier,* 58 *Phil.* 82).