

RAMON CARO, PETITIONER, VS. LUCAS RILLORAZA AND WORKMEN'S COMPENSATION COMMISSION, RESPONDENTS.

G.R. No. L-9569. September 30, 1957

Ponente: CONCEPCION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/82f4cd6db83f/>

CONCEPCION, J.:

Petitioner Ramon Caro seeks a review, by writ of certiorari, of a decision of the Workmen's Compensation Commission, which affirmed that of a referee thereof, sentencing said petitioner to pay the sum of P723.34 to respondent Lucas Rilloraza, by way of compensation for an injury suffered by the latter, in addition to the fees of said Commission.

While constructing the window railing of a building located at No. 1049 R. Hidalgo Street, Manila, and belonging to Mrs. Carmen Prieto de Caro, but managed by her husband, petitioner Ramon Caro, as administrator of their conjugal partnership, and President and General Manager of Ramcar Inc., on August 4, 1953, at about 4:00 p.m., Lucas Rilloraza, a carpenter by occupation, fell to the ground and broke his leg, as the wooden platform on which he and another carpenter were working collapsed. According to Dr. Fidel Guilateo, of the Workmen's Compensation Commission, said injury produced temporary total disability for a period of six (6) months, and permanent partial disability of five (5% per cent of said leg.

The only question for determination in this case is whether Hilloraza was petitioner's employee, within the review of the Workmen's Compensation Act. Petitioner maintains the negative view, upon the ground that Rilloraza was hired by one Daniel de la Cruz, who, allegedly, is an independent contractor. This pretense was rejected, however, by the Workmen's Compensation Commislon, which held that De la Cruz was, at least, "merely an intermediary" and that petitioner is the "real employer" of Billoraza. In this connection/ the decision of the referee, which was affirmed by the Workmen's Compensation Commissioner, says;

"As may be seen from the above resume' of facts, preponderance of evidence tends to point that defend- ant Ramon Caro is the employer in the,sense contemplated by the Act. But even assuming that Daniel de la Cruz, alleged contractor, engaged by respondent really had such work undertaken for the latter, yet the former's participation as such contractor is considered as merely an intermediary between Ramon Caro and the laborers working under him. (Italics ours.)

Petitioner Caro assails this finding, stating:

"In support of his contention that Daniel de la Crua was an independent contractor, petitioner presented Exhibits 'A', 'B', 'C' and 'D', whlen were the contracts signed by Daniel de la Cruz for the repair jobs on the various portions of the building, specifying the nature of the work to be done and the contract prices, and in all said contacts,, Daniel de la Cruz had invariably assumed all responsibility for whatever accident that may happen to his laborers engaged In these jobs."

Said exhibits[1] do not justify the conclusion draws therefrom by herein petitioner. Exhibits B, C and D are dated respectively, December 9 and 16, 1953, and May 21, 1953 long after the accident that disabled respondent

Rilloraza, who, therefore, had nothing to do with the subject-matter of said contracts. Exhibit A refers to the work of changing the "soleras" or floor joists, whereas, at the time of the occurrence, Rilloraza was constructing a "window railing", which is not covered by said contract.

At any rate, the provision in Exhibit A (as well as in Exhibits B, C and D) relieving petitioner from liability for any accident that may happen to the laborers placed in the job by De la Cruz, can not, and does not, affect such obligations as petitioner may have under the Workmen's Compensation Act.

To begin with, De la Cruz spoke only for himself in the exhibits aforementioned. He did not represent Rilloraza, and had no authority to represent him therein.

Secondly, section 7 of said Act provides:

"Any contract, regulation or device of any sort intended to exempt the employer from all or part of the liability created by this Act shall be null and void." (*Italics ours.*)

Pursuant thereto, even if Exhibit A had been signed by Rilloraza, himself, it could not affect his rights, if any, to compensation from petitioner herein.

Thirdly, as held in *Andoyo vs. Manila Railroad Co.*, G.R. No. 34722 (March 28, 1932):

"In regard to the first assignment of error, the defendant company pretends to show through Venancio Nasol's own testimony that he was an independent contractor who undertook to construct a railway line between Maropadlusan and Mantalisay, but as far as the record shows, Nasol did, not testify that the defendant company had no control over him as to the manner or methods he employed pursuing his work. On the contrary, he stated that he was not bonded, and that he only depended upon the Manila Railroad Company for money to be paid to his laborers. As stated "by counsel for the plaintiffs, the word 'independent contractor' means '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 result of the work.' Furthermore, *if the employer claims that the workman is an Independent contractor, for whose acts he is not responsible, the burden is on him to show his Independence. (*Ruel vs. Ligerwood, Rural Tel. Co. supra; underscoring ours.*)

"Tested by these definitions and by the fact that the defendant has presented practically no evidence to determine whether Venancio Nasol was in reality an independent contractor or not, we are inclined to think that he is nothing but an intermediary between the defendant and certain laborers. It is indeed difficult to find that Nasol is an independent contractor or a person who possesses no capital or money of his own to pay his obligations to them, who files no bond to answer for any fulfillment of his contract with his employer and specially subject to the control and supervision of his employer. falls short of the requisites or conditions necessary for the common and independent contractor." (*Underscoring ours.*)

Petitioner herein did not prove, or even try to prove, that De la Cruz had agreed to do a piece of work "according to his own methods * * * without being subject to the control of his employer." On the contrary, the reference, in Exhibit A, to the general nature of the work to be undertaken, without any plans or specifications to be followed, indicates that the floor joists mentioned in said contract were to be changed under the direction and control of Mr. Caro or his representative, and in the manner or by the method designated, by either. In other words, Daniel de la Cruz was not an independent contractor, within the purview of the Workmen's Compensation Act. In fact, the notice of injury filed by Rilloraza on September 28, 1953 referred to De la Cruz as a "capataz". In other words, even if Rilloraza had been engaged by De la Cruz, and there is no affirmative evidence thereon, the former was induced to believe that the latter acted merely as foreman of Caro, who, in turn, was Rilloraza's employee.

Moreover, pursuant to the Workmen's Compensation Acts:

"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, * * *." (Section 2.)

The "employer" and the "employee" referred to in this provision are defined in section 39 of said Act, as follows:

"(a) 'Employer' includes every person or association of persons, incorporated or not, public or private, and the legal representative of the deceased employer. It includes the owner or lessee of a factory or establishment or place of work or any other person who is virtually the owner or manager of 'the business carried on in the establishment or place of work but who, for the reason that there is an independent contractor in the same, or for any other reason, is not the direct employer of laborers employed there.

"(b) 'Laborer' is used as a synonym of 'Employee' and means every person who has entered the employment of, or works under a service * * * for an employer. It does not include a person whose employment is and is not for the purposes of the occupation or business of the employer. Any reference to a laborer injured shall, in case he dies, include a reference to the person dependent on him, as defined in this Act, if the context so requires, or, if the employer is a minor or incapacitated, to his guardian or nearest of kin." (Italics ours.)

In other words, the owner or lessee of a factory or place of work or the owner or manager of the business therein carried on, may be bound to pay the compensation provided in section 2, above quoted, despite the intervention of an "independent contractor." Thus, in *De los Santos vs. Javier* (58 Phil., 82), it was held*

"* * * If we refer again to the definition of employer, we shall see that it comprises the owner or lessee of a factory or establishment or place of work or any other person who is virtually the owner or manager of the business carried on in the establishment or place of work but who, for the reason that there is an independent contractor in the same, or for any other reason, is not the direct employer of laborers employed there. We take this to mean that although the owner of the factory, is not the direct employer of the laborers employed and therein because there is an independent contractor in the factory, the owner of the factory is nevertheless to be considered for the purposes of the Workmen's Compensation Act as, the employer of the laborers working under the Independent contractor but that is true only with respect to laborers doing work which is in the usual course of the owner's business." (Italics ours.)

This was reiterated in *Philippine Manufacturing Co. vs. Garonirao*, (96 Phil, 276). The reason is that

"* * * If the owner of a factory were not liable for the injuries sustained by the employees of an independent contractor engaged in the usual business of the owner, the owner of the factory by subterfuge of an independent contractor could relieve himself of all liability and completely defeat the purposes of the law. * * *." (The Law Governing Labor Disputes in the Philippines, by Vicente J. Francisco (2nd Ed.), p. 813; Italics ours.)

This is, exactly, what would happen if contracts like Exhibit A sufficed to place the aforementioned owner or manager beyond the pale of the Workmen's Compensation Act. Indeed, Daniel de la Cruz does not appear to have any office or business establishment, or even a license to engage in business as building contractor. He would seem to be merely a free-lancing carpenter (not uncommon in Manila), with some experience in carpentry work, who goes around looking for minor repair or construction jobs, for he has - like the intermediary in the Andoyo case "no capital or money to pay his laborers or to comply with his obligations to them." Neither did he file a bond to answer, either for the fulfillment of his contract with petitioner herein, or for the satisfaction of such liability as may arise by reason of any injury arising out of and in the ordinary course of the employment of the laborers engaged pursuant to Exhibit A. In the light of these facts, we fail to see how De la Cruz could possibly be regarded an "independent" contractor. Indeed, there is nothing to indicate that he could pay the compensation prescribed in Republic Act 772.

Upon the other hand, the reference made therein, and in the decisions on this subject, to "independent"

contractors, shows clearly that such status was not meant to be given to every contractor and that the party relying upon said status must establish to the satisfaction of the Court the conditions essential therefor. The mere introduction of Exhibit A,[2] without even the testimony of De la Cruz,[3] and without any affirmative evidence to the effect that it was he, acting in his own name and behalf, who engaged the services of Rilloraza, is far from sufficient to prove that De la Cruz was an independent contractor, pursuant to the accepted standards thereon. Under these conditions, a decision in favor of petitioner herein would, in effect, set at naught and completely nullify the provisions of the Workmen's Compensation Act, inasmuch as the door would thereby be left wide open for the effective circumvention and evasion of the responsibility therein created by the expedient of engaging the services of an indigent and irresponsible intermediary willing to relieve the employer from his liability under said Act.

It is well settled that the same "should be interpreted so as to accomplish, not defeat, the purpose for which it was enacted by the Legislature,"[4] that it "is a social legislation designed to give relief to the workman who has been a victim of an accident in the pursuit of his employment,"[5] and that it should be construed "fairly, reasonably or liberally in favor of and for the benefit of employees and their dependents and all doubts as to right of compensation resolved to their favor and all presumptions indulged in their favor"[6] In fact, the Workmen's Compensation Act[7] specifically provides that "in any proceeding for the enforcement of the claim for compensation" under the provisions thereof, "it shall be presumed in the absence of substantial evidence to the contrary -

1. That the claim comes within the provisions of this Act;"

Again, subdivisions (a) and (b) of section 39 of the Workmen's Compensation Act are explicit on the conditions essential to be exempt from responsibility under section 2 of said Act, namely: (1) the employment must be "purely casual" and, in addition thereto, (2) said employment must "not be for the purposes of the occupation or business of the employer."

"* * * 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 Law Governing Labor Disputes in the Philippines, by Vicente J. Francisco [2nd Ed.] p. 812: italics ours.)

"Employment is 'casual' when it is irregular, unpredictable, sporadic and brief in nature. Under most statutes, even if casual, it is not exempt unless it is also outside the usual business, of the employer. Under this test, most maintenance and repair activities, as well as even remodeling and incidental construction, have been held to be within the usual course of a business." (Larson's Workmen's Compensation Law, Vol. 1, p. 759; italics ours.)

Accordingly, in *Mansal vs. P.P. Gocheco Lumber Co.*, 96 Phil., 941 (April 30, 1955), we held that a laborer, who had been injured while stacking lumber in a lumber yard belonging to the defendant company, was entitled to compensation from the latter, although he had been employed by a contractor who undertook to do the stacking of lumber in said yard at a given rate. In the case we said:

"The case at bar is similar or parallel to that, of stevedores unloading cargo from a ship. The fact that the stevedores work under the control of a contractor who pays them, and that they may seek other work under different carriers, and their work covers a very short period of time as to each carrier, does not exempt the carrier who had employed them in the unloading of the cargo from paying compensation for death or injuries received by them because the unloading of the cargo is an ordinary part of a carrier's duty. To this effect is our decision in the case of *Flores vs. Cia. Maritima*, 57 Phil. 905, thus:

"There is not the least shadow of doubt that the deceased was a laborer in the legal sense. He had "been recruited by order of the captain of the ship and he was engaged in the work of unloading the ship's cargo at the time of the accident. There can be no dispute that this kind of work is included in the business in which the appellee is engaged. That the deceased had been recruited or engaged by a contractor is of no moment because the latter, for purposes of the law, was an agent or representative of the ship's captain who, in turn, represents the appellee." (Italics ours.)

Likewise, in the case of Achijiro Idoma (23 Hawaii, 291), the facts and conclusion reached, as abstracted in the aforementioned work on the Philippine Labor Laws, were:

"A sugar company let a contract to H. to build a road-bed on its plantation to be used in its business, furnished H. with camps, tools, and appliances, the work to be to the satisfaction of the company's engineers; the claimant, a workman employed by H. who alone had the right to discharge him, was injured while working on the road-bed and filed with the Industrial Accident Board his claim for compensation against the company and H.; the question of liability of the company was reserved to the Hawaii court. It was held that the company was liable, it being an employer of the claimant within the language and intent of the act." (Italics ours.)

In the present case, the building in which Rilloraza worked was found to be "intended or used for rental (business) purposes," Petitioner, in turn, had control of such building, as manager of Ramcar, Inc., and administrator, not only of his paraphernal properties, but, also, of those of his wife, Carmen Prieto, "which properties have been incorporated with those of Prieto Hermanos." [8] Obviously, the repair of said building is part of the usual business of the administration of the aforesaid properties, so that the same may be suitable for the gainful purpose above referred to. Consequently, even if Billorasa, who did the repair work thereof, were a casual laborer, engaged directly by De la Cruz, acting as an independent contractor, which he is not, the former would still be an employee of petitioner herein, within the purview of the Workmen's Compensation Act, and, hence, would be entitled to demand compensation from him.

During our deliberations on this case, the question arose which is not raised by petitioner whether the word "business" appearing in the definition of the term "employer", is limited to "commercial" enterprises only, as distinguished [from undertakings of a "civil" nature. In this connection, Laison, in his work on "The Law of Workmen's Compensation," says:

"* * * The crucial word here is 'business', and the courts, ever since the original leading case of *Marsh v. Groner*, have followed the example of that case in giving the word its ordinary and popular meaning: 'There are few words more current in our speech than the word 'business'; few that included a greater variety of subjects, and yet none which, in popular speech, has greater or more marked singleness in denotement. When one's business is the subject of common speech, no one can be in doubt as to the reference. It would be a very exceptional person we do not know how to otherwise describe him who would not understand that the reference is to the habitual or regular occupation that the party was engaged in with a view to winning a livelihood or some gain.' (Vol. I, pp. 738-739; italics ours.)

This view is borne out by the fact that the term "employee", as used in our Workman's Compensation Act, "does not include a person whose employment is purely casual and is not for the purposes of the occupation, or business of the employer." In other words, within the purview of the terms "employer" and "employee", as defined and used in said Act, "business" is synonymous with "occupation", or the means by which a party habitually or regularly earns a "livelihood or some gain."

"* * * The owner of a building who rented it for income purposes, and maintained the building in repair for that purpose, was liable to an employee of a contractor repairing the building as maintenance of the building was considered as part of the owner's business." (Davis vs. Indus. Com. 297 111, 29, 130 N.E. 3335; italics ours.)

"* * * where the home owner rents out the second floor, he is engaged in a business for a pecuniary profit and hence liable for injuries sustained by claimant who fell from a scaffold which had been set up to rebuild a chimney on the house." (Reibold vs. Doll, 283 App. Div. 750, 128 N.Y.S.-2d h5 [1954]; italics ours.)

"* * * it has been held that the work of taking up carpets or mattings, and of cleaning walls, transoms, and curtains is a necessary part of the business of keeping the rooms and hallways of a lodging house in a state of cleanliness and good order, so that an employee, injured while engaged in that work, is in the usual course of the trade, business profession, or occupation of the employer who conducted the lodging house." (23 R.C.L., Sec. 62, p. 7695 underscoring ours.)

In fact, petitioner herein impliedly admitted[9] and the writer of the dissenting opinion explicitly conceded, during our deliberations, that the liability of said petitioner would be incontestable had he directly engaged the services of respondent Rilloraza. Said liability could not possibly exist had those services, which were seemingly casual, not been given "for the purposes of the occupation or business of the employer ."[10]

The case of the Philippine Manufacturing Co. vs. Geronlmo (L-6968),[11] relied upon in the dissent, is not in point, for the following reasons, namely:

- The work of painting a water tank,[12] during which the injury involved therein was sustained, had been undertaken by one Garcia, who "used to engage in painting contracts,"[13] under conditions giving Garcia the status of an "independent" contractor"[14] which De la Cruz does not have in the present case.
- The Philippine Manufacturing Co. was engaged in the business of the manufacture of soap, vegetable lard, cooking oil and margarine, not of painting any water tank[15]. But, when one's business is to let houses for income purposes, the repair, maintenance and painting thereof with a view to attracting or keeping tenants and of inducing them to pay a good or increased rental is, most certainly, part of said business.

Thus, for instance, in *De los Santos vs. Javier* (supra) the defendant, who intended to buy and sell hogs and to establish a plant for curing ham, entered into a contract with one Esquillo for the construction by the latter of a corral for hogs and an office for the persons in charge of the corral. While working on said construction, in which Javier had no direct intervention, De los Santos, a laborer engaged by Esquillo, accidentally sustained injuries which caused his death. This Court held that Javier was not bound to pay compensation therefor, the laborer not been his employee, inasmuch as the business which Javier "was going to establish was that of buying and selling hogs and curing ham." He "was not a building contractor, and it was not part of his business to construct buildings." We added, however, that "if the defendant had made a contract with Esquillo to take the hogs from the corral to the slaughter houses, and the deceased as one of the employees of Esquillo had been fatally injured while engaged in that work, the defendant would have been liable to the heirs of the deceased, although Esquillo was an independent contractor and the deceased his employee." [16]

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the petitioner, It is so ordered.

Paras, C.J., Bengzon, Reyes, J.B.L., and Endencia, JJ., concur.

[1] Translated into English from Tagalog, said Exhibits reads:

EXHIBIT A

AGREEMENT

I, DANIEL DE LA CRUZ, have accepted the job of changing the floor-joists ("soleras") of the old building at 1049 R. Hidalgo, for the sum of THREE HUNDRED (P300.00) PESOS, to be finished before the end of August, 1953.

I will be responsible for any accident that may happen to the laborers I may place in this work.

Manila, May 15, 1953

(Sgd.) DANIEL DE LA CRUZ

B. Angeles, San Juan

Rizal

EXHIBIT B

AGREEMENT

I, the undersigned, DANIEL DE LA CRUZ, will finish the outside drainage pipe (pa-agusan palabas) being made at building No. 1049 R, Hidalgo, for the sum of ONE HUNDRED THIRTY (P130.00) PESOS, as compensation for the labor only, the work to be completed within six (6) days by myself and four (4) men.

I will not hold Mr, RAMON CARO responsible for any possible claim of the laborers during this work.

MANILA, PHILIPPINES, December 9, 1953.

(Sgd.) DANIEL DE LA CRUZ

B. Angeles, San Juan

Rizal

EXHIBIT C

AGREEMENT

I, the undersigned, DANIEL DE LA CRUZ, have agree to construct the toilets for men and.women at 1049 Hidalgo, completing the flooring, sidings and cement finish, with an area of 98 meters, at the basement, and 98 meters In the upper floor, and to finish the three (3) toilets for P300.00.

I will not hold Mr. Ramon Caro responsible for any possible claim of the laborers during this job.

MANILA, PHILIPPINES, December 16, 1953.

(Sgd.) DANIEL DE LA CRUZ

B. Angeles, San Juan

Rizal

EXHIBIT D

AGREEMENT

I, the undersigned, Daniel de la Cuz, have accepted the job of placing eight (8) cross-beams 2- 3n x 12" x 20' - 6 - 2 x 10" x 14' for the sum of SEVENTY (P70.00) pesos at building No. 1049 R. Hidalgo.

I will not hold Mr. Ramon Caro responsible for any possible claim of the laborers during this Job.

Manila, Philippines, December 21, 1955.

Sgd.) DANIEL DS LA CRUZ B.

Angeles, San Juan Rizal

[2] Which is all that petitioner did.

[3] The omission or suppression of which leads to a presumption unfavorable to the petitioner.

- [4] Libron vs. Binalbagan Estate, Inc., G. R. Ho. 41475, July 27, 1934.
- [5] Ramos vs. Poblete, 73 Phil., 241, 40 Off. Gaz., 3474
- [6] Francisco vs. Consing, 63 Phil., 354 See, also 71 C.J. 341-353.
- [7] Section 44.
- [8] In the language of the decision appealed from, the accuracy of which is not contested.
- [9] By pleading that De la Cruz is an independent contractor.
- [10] Section 39(b) of the Workmen's Compensation Act.
- [11] Decided on November 29, 1954.
- [12] Needed, not for the operation of the factory, but "for the storage of water for use in case of fire."
- [13] "In accordance with specifications" attached to the contract, which specifications were absent in the case at bar*
- [14] "The actual supervision of the work * * * was taken care of by Mr. * * * Garcia." who supplied also, the "equipment and tools," according to the stipulation of facts, on which there is absolutely no evidence in the case under consideration.
- [15] In the words of this Court "it is hard to see how the employment of a painter could be said to be for the purpose of that business" of manufacturing lard, vegetable lard, cooking oil and margarine."
- [16] It is worthy of notice that the foregoing statement was quoted with approval in said case of Philippine Manufacturing Co. vs. Geronimo (supra.)

CONCURRING

FELIX, J.,:

Although I agree with Mr. Justice Marceliano R. Montemayor that since the claim on the employer is based on the alleged relationship of the claimant to the petitioner, it is incumbent upon the former to prove that he was the latter's employee, or said in other words, that the burden of proving that essential and basic fact rests upon the claimant Lucas Rilloraza, yet the record contains sufficient proof to establish that Daniel de la Cruz was not an independent contractor for the execution of the job herein involved, but a sort of intermediary between the petitioner and the claimant and a foreman, co-employee or co-worker of respondent Rilloraza. For this reason, I concur in the majority decision penned by Mr. Justice Roberto Concepcion.

DISSENTING OPINION

MONTEMAYOR, J., :

The basic facts in the case as well as the issue involved are correctly stated in the learned majority opinion, penned by Mr. Justice Concepcion, which for purposes of reference I quote belows:

"While constructing the window railing of a building located at No. 1049 R. Hidalgo Street, Manila, and belonging to Mrs. Carmen Prieto de Caro, but managed by her husband, petitioner Ramon Caro, as administrator of their conjugal partnership, and President and General Manager of Ramcar, Inc., on August 4, 1953, at about 4:00 p.m., Lucas Rilloraza, a carpenter by occupation, fell to the ground and broke his leg, as the wooden platform on which he and another carpenter were working collapsed. According to Dr. Fidel Guilateo, of the Workmen's Compensation Commission, said injury produced temporary total disability for a period of six (6) months, and permanent partial disability of five (5%) per cent of said leg.

"The only question for determination in this case is whether Rilloraza was petitioner's employee, within the purview of the Workmen's Compensation Act. Petitioner maintains the negative view, upon the ground that

Rilloraza was hired by one Daniel de la Cruz, who, allegedly, is an independent contractor. This pretense was rejected, however, by the Workmen's Compensation Commission, which held that De la Cruz was, at least, 'merely an intermediary' and that petitioner is the 'real employer' of Rilloraza."

Throughout the majority opinion, the theory seems to be maintained that since petitioner Caro, administrator, was in charge of the house at No. 1049 R. Hidalgo Street, Manila, belonging to his wife Carmen, on which some repair work was being done by respondent Rilloraza at the time he suffered injuries, for the purpose of determining liability for compensation for said injuries, he (Caro) had the burden of proving that he did not hire Rilloraza and that the latter was not his laborer or employee within the provisions of the Workmen's Compensation Act. I disagree. The claim of Rilloraza for compensation is not based on tort, governed by the Civil Code or the criminal law, to establish civil liability, but is founded exclusively on the Workmen's Compensation Act, particularly, Section 2 thereof, which in part provides:

"When an employee suffers personal injury from any accident arising out of and in the course of his employment, *** his employer shall pay compensation in the sums and to the person hereinafter specified." (Italics supplied.)

Naturally, since the claim is based on the employer and employee relationship, the claimant to establish his claim, is the one called upon to prove that he was the employee of the petitioner because the latter had hired him. In other words, the burden of proving that essential and basic fact rests upon claimant Rilloraza. Did he prove that relationship? The very findings contained in the Referee's decision sustaining the claim shows that Rilloraza did not. On the contrary, according to the same decision, it was not Caro but De la Cruz who hired him. I quote from the Referee's decision:

"During the hearing of the case, Lucas Rilloraza declared that sometime in June, 1953, he was hired as carpenter at P6.00 a day, by Daniel de la Cruz for the latter's contract work in the repair and/or construction of the building on the premises located at 1049 R. Hidalgo, Quiapo, Manila; that said building under construction or repair belongs to respondent Ramon Caro" ***.

* * * * *

"We are here called upon to determine the merit of the defense of "independent contractor" advanced by respondent. To resolve this, let us analyze the following resume of facts material to the issue:

(1) That claimant testified to the effect that he was hired and accepted for work by Daniel de la Cruz, the alleged independent contractor;

(2) That it was Daniel de la Cruz who assigned and supervised claimant over the work performed, paid the salaries of the workers therein (including the claimant)" ***. (Italics supplied.)

The above quotation embodying the testimony of Rilloraza and the resume of facts made by the Referee, is the best and, to me, conclusive proof that the employer of Rilloraza was De la Cruz, and the latter was an independent contractor. If Rilloraza wanted to prove that, although he was actually hired by De la Cruz, nevertheless, the latter acted merely as an intermediary, so that in reality, he was employed by Caro, in such case, Rilloraza must also prove that De la Cruz acted as an agent or intermediary, not as an independent contractor. However, Rilloraza again failed to prove this point. On the contrary, he said that it was De la Cruz "who assigned and supervised claimant (Rilloraza) over the work performed, paid the salaries of the workers therein including the claimant" (Rilloraza). Moreover, as stated in the Referee's decision, Rilloraza testified that he was hired by De la Cruz in connection with the latter's contract to repair the house at 1049 R. Hidalgo, Quiapo, Manila, meaning that De la Cruz was a contractor.

But let us pass over this failure of Rilloraza to show that he was an employee of Caro, and as already said, the seemingly affirmative proof that his real employer was De la Cruz, and analyze the relationship between Caro on

one side and De la Cruz on the other. Judging from the four exhibits (Exhibits A, B, C, and D), quoted in the majority decision, the same covered different and separate phases of the entire repair work on the house in question, undertaken by De la Cruz. True, the last three exhibits bear dates subsequent to the occurrence of the accident that befell Rilloraza, although Exhibit A bears a date that is three months prior to the accident. Anyway, these four exhibits which are agreements or contracts between De la Cruz and Caro show the same pattern as to the role assumed and played by De la Cruz in the repair work on the house, for which repair work, according to the testimony of Rilloraza, he (Rilloraza) was engaged and hired, supervised and paid by De la Cruz. For each one of these repair jobs, De la Cruz was to be paid a fixed amount (P300.00, P130.00, P300.00, and P70.00), the job to be done not only by De la Cruz himself, but by his own men, and to be finished within a certain period. In each and all of said agreements, De la Cruz held himself as responsible for any injury suffered by his men. The relationship of employer and independent contractor, to me, cannot be any clearer. Caro, as administrator and in charge of the house of his wife, wanted some repair work done on it. Although a businessman, his business knowledge and ability and training were apparently confined to the manufacture of automobile batteries and the sale of cars, and did not extend to house construction or repair. Not knowing who are good and efficient carpenters, who are careful and not negligent about their personal safety, he decided to do the work by contract, and he engaged De la Cruz to do the work within a certain period and for a certain price.

But the Referee and the majority opinion say that De la Cruz was not an independent contractor, simply because he had no capital or money of his own to pay his carpenters and laborers, and because he filed no bond. I am afraid that this alleged lack of capital, and the supposed financial inability of De la Cruz to pay his men from his own funds, is merely a conclusion drawn from the fact that he was only a modest and small time contractor (contratista) and was presumably paid by Caro weekly or periodically for the work being done by him. But this seems to be a well established practice among independent contractors, to be paid either periodically, or as the construction or repair work progresses, according to the amount of work done, this, not exactly to enable the contractor to pay his men, because some contractors have their own capital and ready cash, but rather, for the contractor to be on the safe side and guard against failure or refusal of the owner or employer to pay the full price of the contract after the work is completed.

As regards the filing of a bond by a contractor, that is not always done. In a big contract involving thousands or hundreds of thousands of pesos, such as the construction of a bridge, school building, a factory or a commercial house, with elaborate specifications, specially where the time element is important, the contractor is almost invariably required to file a bond so that should he abandon the work when it is only partly finished, or fail to strictly follow the specifications, the owner of the bridge or school building such as the Government, or the private owner of the factory or commercial house, may be amply protected against damages, because it might be necessary to find and hire another contractor to finish the job, or to demolish and reconstruct the work already done by the delinquent contractor, all of which would involve loss of much time and additional expense. But for small repair jobs of P70.00, P130.00 or P300.00, and without specifications, like the ones undertaken by De la Cruz, there was absolutely no necessity for any bond because if De la Cruz abandoned his contract, Caro could easily have gotten another contractor to finish the jobs, considering their relative insignificance.

The majority opinion cites the case of *Andoyo vs. Manila Railroad Co.*, G. R. No. 34722, March 28, 1932. According to the facts of said case appearing in the quotation, Venancio Nasol undertook to construct a railway line between Maropadlusan and Mantalisay for the Manila Railroad Company. We all know that the construction of a railroad line, however short, involves considerable outlay, capital and investment, and the work has to be finished within the shortest time possible so that the Railroad Company could immediately use it for its rolling stock. As I have already said, in such a contract, the filing of a bond by the contractor is very necessary to protect the employer from loss in case of failure of the contractor to live up to his contract. The Court in that case found

as a fact that Nasol had no capital for such a big project; he filed no bond and he did not say that the Manila Railroad Company had no control over him as to the manner or methods he employed in pursuing the work. No wonder that the Court found him not to be an independent contractor.

Speaking of the agreements Exhibits A, B, C, and D, the majority opinion declares that De la Cruz had no right to speak for Rilloraza about the latter's right or lack of right to claim compensation from Caro in case of any injury suffered by him, arising out of his work. But De la Cruz did not attempt or even pretend to speak for Rilloraza in this regard. He was merely assuming the responsibility as Rilloraza's employer. As a matter of fact, that assumption and undertaking of responsibility by De la Cruz was really necessary for Caro's protection and peace of mind because if he is an independent contractor, as I firmly believe he is, then it is he who is called upon to answer for any compensation claim made by his employees. That assurance and undertaking by De la Cruz is clearly indicative of his role as an independent contractor.

Going back to my quotation from the Referee's decision, the same, in my opinion, conclusively proves that De la Cruz was the employer of Rilloraza, because it was the former who hired Rilloraza as a carpenter at P6.00 a day, assigned him to work, supervised his work, and paid his salary. Nowhere do we find any intervention by or even reference to Caro, as far as Rilloraza was concerned. Moreover, the quotation mentions De la Cruz' ('contract work in the repair and/or construction of the building on the premises located at 1049 R. Hidalgo, Quiapo.' Caro is mentioned only as the alleged owner of said house. The only logical conclusion from the above quotation is that De la Cruz, as contractor, was given a contract by Caro to make repairs on the house in question, and to carry out his contract, he hired his own men, including Rilloraza, assigned the task or carpentry work to be done by each, supervised them and paid their wages. Can there be any clearer case of an independent contractor? But the majority opinion says that in the notice of injury, Exhibit A, Rilloraza referred to De la Cruz as his "capataz" who took him to a "manghihilot" after the injury. His reference to De la Cruz as "capataz" can be explained because, according to his testimony referred to by the Referee, Rilloraza said that De la Cruz not only hired him and paid his wages, but he supervised his work. However, in question 21 of the same exhibit, we find the following:

"21. Have you given your employer of notice of injury/sickness?

Yes.. , When? August 4, 1953. To whom? Mr. Daniel Cruz. He was a witness to the accident."

In other words, answering question No. 21, Rilloraza said that he gave notice of his injury to De la Cruz as his employer, and in fact, De la Cruz witnessed the accident.

Page 6 of the majority opinion says the following: "In other words, even if Rilloraza had been engaged by De la Cruz and there is no affirmative evidence thereon..." Is not the testimony of Rilloraza and as found by the Referee that De la Cruz engaged him as a carpenter at P6.00 a day, an affirmative evidence of employment? Can there be any better evidence that Rilloraza was employed by De la Cruz than Rilloraza's own testimony?

On page 5 of the majority opinion, we find the following statement and assertion:

"Petitioner herein did not prove, or even try to prove, that De la Cruz had agreed to do a piece of work 'according to his own methods * * * without being subject to the control of his employer'. On the contrary, the reference, in Exhibit A, to the general nature of the work to be undertaken, without any plans or specifications to be followed, indicates that the floor joists mentioned in said contract were to be changed under the direction and control of Mr. Caro or his representative, and in the manner or by the method designated by either. In other words, Daniel de la Cruz was not an independent contractor, within the purview of the Workmen's Compensation Act." * * * .

Again I have to disagree. Contrary to the above assertion, the very Exhibit A is the best proof that De la Cruz, had agreed to do a piece of work without being subject to the control of his employer Caro. Let us again reproduce

Exhibit A:

"EXHIBIT A

"AGREEMENT

"I, DANIEL DE LA CRUZ, have accepted the job of changing the floor joists ("soleras") of the old building at 1049 R. Hidalgo, for the sum of THREE HUNDRED (P300.00) PESOS, to be finished before the end of August, 1953.

"I will be responsible for any accident that may happen to the laborers I may place in this work.

"MANILA, May 15, 1953.

(Sgd.) DANIEL DE LA CRUZ

B. Angeles, San Juan

Rizal"

According to Exhibit A, De la Cruz accepted a carpentry job without any strings attached. He hired his own laborers and placed them in the work. Not a word was said about supervision or control by Caro, or the details and the manner the job was to be done, or the hours of work of the laborers. But the majority opinion says that since there were no plans or specifications mentioned in Exhibit A, that is an indication that the floor joists mentioned in the contract were to be changed at the direction and control of Mr. Caro or his representative. I am afraid that the conclusion is unwarranted. To change the floor joists ("soleras") of an old building with new ones, supplied by the owner, as in this case, for the stipulated price of P300.00 would hardly call for plans and specifications. Any master carpenter worthy of the name can, with the aid of his men, easily remove old floor joists ("soleras") and replace them with new ones, without any supervision, much less any plans or specifications. Of course, said, master carpenter, as did de la Cruz, supervised his men. Specifications are needed only for big constructions, like a bridge, a schoolhouse, or a factory, where the contractor also supplies the material, in order to guard against the contractor using material inferior to or different from that agreed upon between owner and contractor.

On this point of independent contractor, I may cite a few authorities:

"An 'independent contractor' is one who contracts to do specific piece of work, furnishes his own assistants, and executes work entirely in accordance with his own ideas or plans previously given him by person for whom work is done, without being subject to latter's orders in respect to details of work. *Ruth Bros. vs. Roberto*, 109 S.W. 2d 800, 802, 270 Ky. 339." (21 Words and Phrases p.24)

"An 'independent contractor, is one who engages to perform a certain service for another, according to his own manner and method, free from control and direction of his employer in all matters connected with the performance of the service, except as to the result or product of the work. *Fairmont Creamery Co. of Lawton v. Carsten*, 55 P. 2d 757, 759, 175 Okl. 592." (Ibid.)

"Principal test to be applied in determining whether one rendering services for another is an 'employee' or an 'independent contractor' is whether employer has right to control details of work, place of work, time of employment, method of payment, and right of summary discharge are to be considered. *Town of Eagle v. Industrial Commission*, 266 N.W. 274, 275, 221 Wis. 166." (Ibid., p.36)

"Experienced carpenter, contracting to construct house by means and methods he deemed proper for fixed consideration, and employing, fixing wages and hours, and having entire control of men assisting him, held 'independent contractor, not entitled to benefit of Workmen's Compensation Act. *Royal Indemnity Co. v. Blankenship*, Tex. Civ. App., 65 S.W. 2d 327, 329." (Ibid.)

"A carpenter, who was engaged by the owner of a building to make repairs to the roof and veranda of the building, and who did the work in his own way and at his own time, without direction from the owner, except indication of the places to be repaired, was an 'independent contractor', and not an 'employee', within the Workmen's Compensation Law; the test being that a contractor is subject to the will of his employer only as to the result of his work, and not as to the means by which it is accomplished. *Ball v. Bertelle's estate*, 195 N.Y.S. 150, 201 App. Div. 708." (Ibid.)

"A painter, who agrees with an apartment house owner, furnishing the materials, to paint a given number of windows with his own brushes, in his own manner and for a fixed sum for the entire work, is an 'independent contractor' and not an 'employee,' within the Workmen's Compensation Law. *Prince v. Schwartz*, 180 N.Y.S. 703, 190 App. Div. 820" (Ibid. p57)

"Payment of a fixed sum for a completed job is characteristic of independent contractorship. *Ind. Comm. vs. Hammond*, 77 Col. 414, 236 P. 1006 (1925)." (Ibid., p.57).

"Payment of a fixed sum for a completed job is characteristic of independent contractorship, but not conclusive. A typical example is that of the contract to clean out a well for one hundred dollars. This was held not only to negative employment, but even to take the case out of the special Washington statute embracing independent contractors when the essence of the contract is personal service. Similarly, a workman who agreed to tear down a barn for \$183 plus a chicken roost valued at \$2 was held an independent contractor." (Workmen's Compensation Law, Larson, Vol. 1, p.650).

On the basis of Exhibits A, B, C, and D, which as already said, give a pattern of the relationship between De la Cruz and Caro, and applying the authorities abovesited, De la Cruz was clearly an independent contractor because De la Cruz hired his own men, assigned them to their work, fixed their hours of work, and paid them. On the other hand, Caro had no relation whatsoever with the hiring of said men, their selection as to their capabilities as carpenters, the hours of work, the tools used, and the manner they did their repair job, etc. The only thing Caro was interested in was the finished job for which he paid or promised to pay a fixed amount.

But we need not go to foreign authorities to show that De la Cruz was an independent contractor and that Rilloraza was not an employee of Caro. In the case of *Catalla vs. Tayabas Lumber Co., Inc.*, 57-Phil. 835, the Company engaged in the cutting of timber, used to haul its timber through "kaingins" occupied by Martinez and Mercurio, and to facilitate passage, the two men and the Company entered into a contract whereby the two men undertook to open a trail over their "kaingins", clear it of underbrush and trees and maintain the same, for the sum of P50.00 a year, receiving advance payment of P150.00 for three years. The two men hired one Mariano Oriel to help them cut the brush and trees found on this proposed trail. While working, a tree fell on Oriel, killing him. His heirs filed a claim against the Lumber Company and the trial court awarded said heirs the funeral expenses of Oriel, as well, as the sum of P3.00 a week, which he used to earn, for 208 weeks. On appeal to this Court, the judgment was reversed and the Lumber Company was absolved from the complaint. This Tribunal, through Mr. Justice Imperial, said:

*** "There is no doubt but that the deceased was not an employee or laborer of the appellant and that between them there was not even a contractual or juridical relation.

"The trail belonged to Martinez and Mercurio because it was within the lands of which they were in possession. The contract executed between them and the appellant was entirely independent of the latter's business of cutting timber, and the wages earned by the deceased came directly from the owners of the lands. It is true that the appellant's timber had to pass over the trail which Martinez and Mercurio were to open, but the appellant had not the least intervention in the task of clearing it which the former undertook to do, except that of paying the annual rent of P50 which was stipulated as payment for the use of said trail. Employers should deserve before the law the same consideration as workmen and they should not be held liable for accidents

suffered by those who are not their laborers or employees. According to the evidence, the relation created was between the deceased, on the one hand, and Joaquin Martinez and Fabian Mercurio, on the other."

In effect, this Court held Martinez and Mercurio as independent contractors, employers of Oriel.

In the case of Philippine Manufacturing Company vs. Santos, G. R. No. L-6968, November 29, 1954, the facts are as follows: The Philippine Manufacturing Company, later referred to as the Company, is a corporation engaged in the manufacture of soap, vegetable lard, cooking oil, and margarine, with factory at Velasquez, Tondo, Manila. It engaged one Eliano Garcia to paint an elevated tank within the factory compound, erected for the purpose of water storage for use in case of fire. Garcia, engaged in painting contracts, hired Arcadio Geronimo as a painter and laborer. The contract, Annex "A" between the Company and Garcia reads as follows:

"DESCRIPTION

PRICE

"For supplying labor, equipment and tools in the paint of the inside of the elevated water tank located at 1120 Velasquez, Tondo, Manila, under the following specifications :

P590.00

1. Wire brush inside surface to bare metal.
2. Wipe off loose dirt and rust.
3. Apply two coats of Kepper's Tank Solution.
4. Clean job site broom clean.
5. The Contractor agrees to comply with the provisions of Republic Act No. 602 and the local laws and regulations. The Contractor shall also be responsible for indemnity, and save harmless the Philippine Manufacturing Company from and against any claims, losses, and/or damages arising out of, or in connection with the prosecution of the work herein mentioned."

On November 22, 1952, Geronimo died as a result of a fall while painting the elevated water tank. A claim for compensation was filed with the Workmen's Compensation Commission, which ordered the Company to pay said compensation. On appeal to this Court, the decision rendered by the Commission was set aside, with an order that another decision should be rendered, ordering Garcia to pay the compensation. Said this Court, speaking through Mr. Justice Alex Reyes:

"It thus appears that Garcia, a painting contractor had by contract undertaken to paint a water tank belonging to the company 'in accordance with specifications and price stipulated¹, and with 'the actual supervision of the work (being) taken care of by himself. Clearly, this made Garcia an independent contractor, for while the company prescribed what should be done, the doing of it and the supervision thereof was left entirely to him, all of which meant that he was

Dissenting, free to do that job according to his own method without being subject to the control of the company except as to the result. "The decision complained of, however, holds that Garcia was not an independent contractor because (1) he had no capital of his own, (2) he did not do the painting job according to his own method and without being subject to the control of the company, and (3) he put up no bond to answer for the fulfillment of his contract. The first ground is contrary to what appears in the record, for in the report of the accident filed by 'his" contractor (Exhibit A) it is stated that his capital was less than P10,000.00, which is an admission that he had capital of his own although it is less than that amount. The second ground is without factual basis and is, moreover, contrary to what may be fairly inferred from the stipulated facts that the

company was to pay for the work called for in the contract Annex A, the contractor to furnish labor, equipment and tools therefor, have the actual supervision of the work and be responsible for all claims for indemnity. The absence of a bond is some time taken into account together with other circumstances indicative of the capacity in which a person undertakes to do a piece of work for another. But it is not a controlling factor in determining whether that person is an independent contractor." *****

*****"It follows from the foregoing that the deceased cannot be regarded as the laborer or employee of the manufacturing company, for he was working for an independent contractor and met death while doing work which was not in the usual course of the company's business. Such being the case, the company is not the one called upon to pay the compensation due the dependents of the deceased. Responsibility for such payment rests upon his employer, Eliano Garcia." (Italics supplied).

It will be noticed from the above decision that although Garcia did not file any bond, nevertheless, he was held to be an independent contractor.

Then we have the recent case of Josefa Vda. de Cruz, et al. vs. The Manila Hotel Company,[*] G. R. No. L-9H0, April 30, 1957, the facts of which are as follows: In by reason of the leasing of the Manila Hotel to the Bay View Hotel, the corporation owning the Manila Hotel notified its employees that they were to be laid off that it would grant them a separation gratuity. For several years prior to 1954 Tirso Cruz with his orchestra furnished music for the Manila Hotel, under the conditions embodied in the contract, Annex 1, whereby the Manila Hotel engaged the services of Tirso Cruz's orchestra, composed of fifteen musicians, including Tirso and Ric Cruz as vocalist, at P250.00 per day, the orchestra to play from 7:30 p.m. to closing time daily. Tirso and his musicians claimed the gratuity promised to its employees, but the Hotel management denied the claim, saying that they were not its employees. They brought an action to enforce their claim in the Court of First Instance of Manila. On motion by the Hotel and after hearing the parties, the trial court dismissed the complaint for lack of cause of action for the reason that plaintiffs were not employees of the Hotel. On appeal, this Court affirming the order of dismissal, through Mr. Justice Bengzon, said:

"Still going further, are these plaintiffs 'employees' of the Hotel? None of them, except Tirso Cruz and Ric Cruz, is mentioned in the contract Exhibit 1. None has submitted any contract or appointment except said Exhibit 1. Obviously their connection with the Hotel was only thru Tirso Cruz who was the leader of the orchestra; and they couldn't be in a better class than Tirso Cruz who dealt with the Hotel. Was Tirso Cruz an employee? Or was he an independent contractor, as held by the trial court?

"It will be observed that by Annex 1 the Manila Hotel contracted or engaged the services of your orchestra (of Tirso Cruz) 'composed of fifteen musicians including yourself plus Ric Cruz as vocalist' at P250.00 per day, said orchestra to 'play from 7:30 p.m. to closing time daily'. What pieces the orchestra shall play, and how the music shall be arranged or directed, the intervals and other details such are left to the leader's discretion. The musical instruments, the music papers and other Paraphernalia are not furnished by the Hotel; they belong to the orchestra, which in turn belongs to Tirso Cruz not to the Hotel. The individual musicians, and the instruments they handle have not been selected by the Hotel. It reserved no power to discharge any musician. How much salary is given to the individual members is left entirely to 'the orchestra' or the leader. Payment of such salary is not made by the Hotel, to the individual musicians, but only a lump sum compensation is given weekly to Tirso Cruz.

"Considering the above features of the relationship, in connection with the tests indicated by numerous authorities, it is our opinion that Tirso Cruz was not an employee of the Manila Hotel, but one engaged to furnish music to said hotel for the price of P250.00 daily, in other words, an independent contractor (1) within the meaning of the law of master and servant.

" 'An independent contractor is one who in rendering services, exercises an independent employment or

occupation and represents the will of his employer only as to the results of his work and not as to the means whereby it is accomplished; one who exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work; and who engages to perform a certain service for another, according to his own manner and method, free from the control and direction of his employer in all matters connected with the performance of the service, except as to the result of the work.' (56 C.J.S. pp. 41-43.)"

Again, it will be noticed that contrary to the theory maintained in the majority opinion that to be an independent contractor, one must have capital and must file a bond, this Court, despite the fact that Tirso filed no bond and there is no proof that he had capital, held Tirso as an independent contractor. In all probability, Tirso actually had no capital. He was but a mere musician, although he was a band leader and led and directed his orchestra, and played an instrument. Borrowing the phrase used in the majority opinion, Tirso was but "a free-lancing" musician who contracted to furnish music to hotels and night clubs, and yet this Court said he was an independent contractor. Ha, not his orchestra, was paid P250.00 a day, and most likely, when Tirso was paid a lump sum at the end of the week, from it he paid his musicians their share according to a schedule previously fixed by him or agreed upon by them.

On the basis of the above-cited decisions, I believe that De la Cruz' who undertook to do a repair job for a fixed amount and within a certain period of time, hired and employed his own men to do the work with their own tools and instruments and according to the method and manner he chose, supervised them, fixed their hours of work, and paid them, although he filed no bond and there was no proof that he had any capital of his own to pay his men, was an independent contractor and employer of Rilloraza, to whom the latter should look for compensation for his injuries.

But the majority opinion cites Section 39 (a) of the Workmen's Compensation Act, which reads:

"(a) 'Employer' includes every person or association of persons, incorporated or not, public or private, and the legal representative of the deceased employer. It includes the owner or lessee of a factory or establishment or place of work or any other person who is virtually the owner or manager of the business carried on in the establishment or place of work but who, for the reason that there is an independent contractor in the same, or for any other reason is not the direct employer of laborers employed there."

The above provision of the Workmen's Compensation Act has been interpreted in the very case of De los Santos vs. Javier, 58 Phil. 82, cited in the majority opinion, to the effect that notwithstanding that there is an independent contractor in a factory or place of business, the owner or manager of the factory is held liable as an employer of the laborers working under the independent contractor, but only with respect to laborers doing the work which is in the usual course of the owner's business. This provision and interpretation of the law is a wise one so as to prevent the owner or manager of a factory or place of business from avoiding liability by employing an independent contractors to run his business. If for instance, in his business of manufacturing automobile batteries and selling cars, Caro employed an independent contractor in his factory or place of business to perform that work or conduct said business, just to avoid liability for compensation for injuries suffered by those employed by the independent contractor, according to law, Caro would still be liable, because he would be regarded as the employer of said laborers of the independent contractor. But this law finds absolutely no application in the present case. There is no claim or pretense that the repair of the house of Caro's wife at R. Hidalgo Street had any relation or connection with Caro's business of manufacturing automobile batteries and selling cars. Was the repair job connected with any other business in which Caro was then engaged? Neither the record nor the decision of the Referee nor the majority opinion mentions, much less shows said business. The only statement made on this point is the one made by the Referee to the effect that the house in question is "apparently intended or used for rental (business) purposes". What the Referee meant by that phrase is not clear. But assuming for a moment that the

house was not only intended but actually used for rental purposes, was that a business within the meaning of Section 39 (a) of the Workmen's Compensation Act, as above-quoted? Can the husband, as administrator of his wife's property, such as the house in question, be regarded as engaging in a business if he rents said house?

In the case of *Domingo Imperial vs. Collector of Internal Revenue*[*], G.R. No. L-7924, September 30, 1955, this Court held that renting a nine door camarin to three merchants paying monthly rentals amounting to P6,240.00 a year was not enough to consider its owner as engaged in the business of leasing real estate so as to render him liable to the payment of the real estate dealers tax. Said this Court speaking through Mr. Justice Labradores:

"It is apparent that as the plaintiff was, from 1946 to 1950, Senator-at-large and later Minister in a foreign country, the exercise of the duties of which offices required the greater part of his time and his absence from the Philippines, there is no weight in the argument, in the absence of proof, that during that period of time he was 'engaged in leasing real estate,' especially if it be taken into account that the camarin which he had been leasing to the merchant-tenants appears to be the only property of his for lease, and the annual rental received therefrom being much less than the annual income he received from the office or offices which he had been holding. 'To engage' is to embark in a business or to employ oneself therein (Webster's New International Dictionary). The word 'engage' connotes more than a single act or a single transaction; it involves some continuity of action (*Day v. Equitable Life Assur. Soc. of the United States*, 83 F. 2d 1147, 1148). 'To engage in business' is uniformly construed as signifying to follow the employment or occupation which occupies the time, attention, and labor for the purpose of a livelihood or profit (*Semple v. Schwarz*, 109 S.W. 633, 636, citing *Beickler v. Guenther*, 96 N.W. 895, 896). The expressions 'engage in business' 'carrying on business' or 'doing business' do not have different meanings, but separately or connectedly convey the idea of progression, continuity, or sustained activity, and 'engaged in business' means occupied or employed in business, 'carrying on business' does not mean the performance of a single disconnected act, but means conducting, prosecuting, and continuing business by performing progressively all the acts normally incident thereto while 'doing business' conveys the idea of business being done, not from time to time, but all the time.' (*Lewellyn v. Pittsburgh, B. & L. E. R. Co.*, G. C.A. Pa., 222 P.177, 185) Under the circumstances we cannot hold that the plaintiff was engaged in leasing real estate, as the act of his in leasing his only camarijq was an isolated transaction, and as he was at the time occupied in holding an office under the Philippine Government which required the greater part of his time and attention."

But again, assuming for a moment that renting a single house not needed by the owner is a regular business, this, without proof that said owner has obtained the corresponding license or permit and has been required to pay and has been paying the real estate dealers tax, can we consider the repair of said house for rent a part of the business of house renting? I hold that we may not. Caro was not engaged in the construction or contracting business to build and repair houses for rent. Now, if Caro, assuming that renting one single house of his wife can be considered a regular business, had employed, say, a bill collector to collect the monthly rent, or a book- keeper to keep the books of the business, and anyone of them is injured, then he may perhaps be held liable to pay compensation.

The majority opinion cites foreign authorities to the effect that the owner of a building who rents it for income purposes and maintains the same repair for that purpose, was liable for the employees of the contractor repairing the building as maintenance of the building was considered as part of the owner's business. True, there are some authorities holding this view, but I believe that the weight of authorities is, by far, on the other side. And this weight of authority, to me, is the more reasonable because the mere repair or painting of a building or structure which is connected, even intimately related to the main business, can hardly be considered as part of said business. The repair of a building for rent or the installation of additional facilities such as plumbing, electrical appliances, etc. may not be regarded as part of the business of renting houses or apartments. They rightly belong to building and construction work, or the plumbing or electrical installation business. That is why, in the case of

Mansal vs. P. P. Gocheco Lumber Co.,[*] G. R. No. L-8017, April 30, 1955, cited in the majority opinion, this Court, through Mr. Justice Labrador, gave the following example:

"In a sawmill, for example, if a power unit running the mill gets out of order and a mechanic is contracted to fix the engine, the work of the mechanic would be considered as purely casual, because the reparation of the mill is not the actual work or business of the sawmill but the sawing of lumber."

The majority opinion cites that case of Achijiro Idoma (23 Hawaii, 29D which holds that where a sugar company gave a contract to H. to build a road-bed on its plantation to be used in its business, furnishing H. with camps, tools, and appliances, the work to be to the satisfaction of the company, and the claimant, a workman employed by H. who alone had a right to discharge him, was injured, the company was liable as employer of the claimant for injuries suffered by him. However, it will be seen that in that case, the company furnished H. not only with camps, but also with the tools and appliances to be used by him, thereby giving ground to the conclusion that H. was a mere intermediary or an agent performing a work as indicated, closely supervised and controlled by the company. On the other hand, we have the case of Catalla vs. Tayabas Lumber Co., supra, decided by this Court wherein Martinez and Mercurio undertook to construct and maintain a trail or road over their kaingins for the use of the lumber company in hauling its lumber, for a certain amount. The two men employed one Oriel to help cut trees and brush on the proposed trail or road, paying him P1.00 to P2.00 daily. While working, Oriel was killed by a tree falling upon him and his heirs filed a claim against the lumber company. This Court, reversing the decision of the lower court which awarded compensation to Oriel's heirs, held that he (Oriel) was not an employee of the lumber company, because although the company's timber had to pass over the trail or road, nevertheless, it had no intervention in the task of clearing it.

The majority also cites the case of Mansal vs. P. P. Gocheco Lumber Co. already referred to which held that a laborer injured while stacking lumber in the lumber yard of the company, was entitled to compensation from the latter although he had been employed by a contractor who undertook to do the stacking of lumber in the yard at a given rate. I agree with the ruling in said case, because the stacking of lumber in a lumber yard is clearly part and parcel of the operation of the sawmill of the company. So; is the unloading of cargoes from a ship, said work being an ordinary part of carrier's duty mentioned in said decision. The same is true in the case of Flores vs. Cia Maritima, 57 Phil. 905, also cited in the majority opinion, wherein the deceased had been recruited by order of the very captain of the ship, and was engaged in the work of unloading the ship's cargo, which work is part of the carrier's duty. Naturally, the company was held liable.

But in the case of De los Santos vs. Javier, 58 Phil. 82, this Court made the" following statement of facts, and rendered its conclusion as follows:

"It appears from the evidence that the defendant was going to buy and sell hogs and to establish a plant for curing hams, and that through Carmen Javier de la Rea he engaged a contractor by the name of Fructuoso Esquillo to construct a corral for hogs and an office for the person in charge of the corral. The price agreed upon was P500. The contractor was to furnish the labor. The work was to be finished within fifteen days. The deceased Bonifacio de los Santos was one of the workmen engaged by the contractor. He was paid by the contractor and was subject to the contractor's orders. The defendant had no direct intervention in the work. On June 15, 1931, while Bonifacio de los Santos was engaged in placing a beam, he fell from a scaffold and received injuries which caused his death the next day.

"Under these circumstances, we are constrained to hold that Bonifacio de los Santos was not an employee of the defendant. As already indicated, the business which the defendant was going to establish was that of buying and selling hogs and curing hams. The defendant was not a building contractor, and it was not a part of his business to construct buildings. If we refer again to the definition of employer, we shall see that it comprises the owner or lessee of a factory or establishment or place of work or any other person who is

virtually the owner or manager of the business carried on in the establishment or place of work but who, for the reason that there is an independent contractor in the same, or for any other reason, is not the direct employer of laborers employed there. We take this to mean that although the owner of the factory is not the direct employer of the laborers employed therein because there is an independent contractor in the factory, the owner of the factory is nevertheless to be considered for the purposes of the Workmen's Compensation Act as the employer of the laborers working under the independent contractor, but that is true only with respect , to laborers doing work which is in the usual course of the owner's business. In the case at bar, for example, if the defendant had made contract with Esquillo to take the hogs from the corral to the slaughterhouse, and the deceased as one of the employees of Esquillo had been fatally injured while engaged in that work, the defendant would have been liable to the heirs of the deceased, although Esquillo was an independent contractor and the deceased his employee.

"Most of the compensation acts expressly or impliedly provide that any person who has work done under contract on or about his premises, which is an operation of the usual business which he there carries on, shall be deemed an employer and shall be liable under the act to such contractor, his Subcontractors, and their employees, when injured or killed on or about the premises of the employer while doing work which is in the usual course of his business.

" 'These provisions as a rule are not held to apply to the owner of premises upon which improvements are being erected, demolished, altered or repaired by an independent contractor nor to a contract made by the owner of the premises with an independent contractor. ' *** (Schneider on Workmen's Compensation Law, Second Edition, pages 310 to 312, and cases there cited.)

"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." (Underlining supplied.)

It will be seen from the above quotation that although the construction of the corral for hogs and an office for the person in charge of the corral, especially the corral itself, was intimately and closely connected with the business of buying and selling hogs and curing hams, nevertheless, this Court held that said construction was not a part of the business because the owner was not a building contractor and it was not a part of his business to construct buildings.

It is interesting to note that the latter part of the quotation citing with favor Schneider on Workmen's Compensation Law, which I again reproduce below for emphasis:

" 'These provisions as a rule are not held to apply to the owner of premises upon which improvements are being erected, demolished, altered or repaired by an independent contractor, nor to a contract made by the owner of the premises with an independent contractor. ***",

directly contradicts the view of Larson in his book on the Workmen's Compensation Law cited by the majority opinion to the effect that maintenance and repair activities and as well as remodelling and other incidental construction in a house has been held to be within the course of trade, occupation or business.

Lastly, assuming for the moment that Rilloraza was an employee of Caro, which he is not, and that the latter was engaged in the business of renting houses, which was not proven, inasmuch as Rilloraza's work of repairing the house was not within but outside the alleged business of renting houses, I hold that Rilloraza should be regarded as a mere casual employee within the meaning of Section 39 (b) which provides: "

(b) 'Laborer' is used as a synonym of 'Employee' and means every person who has entered the employment of, or works under a service *** for an employer. It does not include a person whose employment is purely casual

and is not for the purposes of the occupation or business of the employer." ***

"Casual" is defined and described by Larson in his book *Workmen's Compensation Law* cited in the majority opinion as follows:

"Employment is casual where it is irregular, unpredictable, sporadic and brief in nature."

In that case of *Mansal vs. P. P. Gocheco Lumber Co.*, supra, this Court through Mr. Justice Labrador, defined "casual" as follows:

"Casual" means occasional, coming without regularity.

"The following authorities are enlightening:

"Carpenter employed by merchant on work of converting warehouse into apartment and garage held engaged in 'casual employment' at time of his death, so that his widow was not entitled to compensation. 77 P.S. Sec. 22. *Fedak v. Dzialdowski*, 172 A. 187, 188, 113 Pa. Super. 104." (Words & Phrases, Vol. 6, p.291) *Quick v. E.B. Kintner*

"Carpenter engaged by butchers on work of enlarging storeroom and constructing apartments for renting purposes held engaged in 'casual employment, and not in 'regular course of the business of the employers at time of injury and not entitled to compensation and not tion. 77 P.S. Sec. 22. & Son, 172 A. 189, 113 Pa. Super. 108. (Ibid.)

"Employment by hotel manager of painter on hourly salary basis to do some painting in hotel, the work being apparently of limited scope, held 'casual employment' within provision of *Workmen's Compensation Law*, excepting such employment from operation of compensation law. Rev. St. 1931, Sec. 124-101 et seq., and Sec. 124-106-7? In re *Lamont*, 141, P. 2d 497, 499, 48 Wy. 56." (Ibid.)

In the case of *Orr et al vs. Boise Cold Storage Co. et al.*, 12 Pacific Reporter (2d Series) p.270, the Company was engaged in the manufacture, storage, and sale of ice and maintained a commercial cold storage warehouse. Said Company employed Orr who was a carpenter by occupation and a helper at a fixed daily wage to repair and put back into place a wall of the storage warehouse which was bulging and was separated from the ceiling, leaving an opening. The job lasted about ten days. While working on it, as the helper was descending from a scaffold erected to facilitate the work, a heavy claw hammer that he was carrying in a loop in his overalls caught a projection, became dislodged, and fell, striking Orr who was standing directly below and knocking him down. From this injury, Orr eventually died and his heirs filed a claim against the Company. The Industrial Accident Board after hearing, awarded compensation, which award was modified and affirmed by the District Court. However, on appeal to the Supreme Court of Idaho, the judgment was reversed on the ground that the employment of Orr was casual within the meaning of the law, C. S. Sec. 6216, as amended, which provides that: "None of the provisions of this chapter shall apply to: *** 3. Casual employment." The Idaho Supreme Court held that the employment of Orr was merely incidental and occasional, without regularity, and for a limited and temporary purpose, and was not a regular recurring employment which was customary and to be anticipated with regularity.

The case of *Blood vs. Industrial Acc. Commission of State of California et al.*, 157 Pacific Reporter, p.1140, involved the interpretation and application of the *Workmen's Compensation, Insurance and Safety Act*, which excluded from the meaning of the word "employee" as used in the act, any person whose employment is both casual and not in the usual course of the trade, business, profession or occupation of his employer. Petitioner Blood owned a two-story building in Los Angeles, consisting of a storeroom below and two flats above, one of the two flats being occupied by himself. Blood employed one W. F. Heck, a house painter by trade, to apply two coats of paint to the house, Blood furnishing the painting materials and paying Heck \$3.50 a day, the period of employment being indefinite, although the evidence showed that the work could reasonably have been done in two

weeks. During the work, Heck was accidentally injured and suffered a temporary total disability. The Industrial Accident Commission made an award in his favor. Upon review by certiorari of the award, the District Court of Appeals, Second District of California, held that the employment of Heck was not in the usual course of any business of his employer, there being no evidence Blood was engaged in any business which in its usual course, if at all, called for the employment of house painters. Citing a Massachusetts decision interpreting the word "casual" to be something which comes without regularity and is occasional and incidental; that its meaning may be more clearly understood by referring to its antonyms, which are, "regular", "systematic", "periodic", and "certain", and applying these distinctions, it was held that the employment of Heck by Blood to paint his house, was casual, that is, it was a mere occasional and incidental contract not constituting or connected with any regular, systematic, or certain business. The award under review was consequently annulled.

Other similar cases may be cited to show that employment which is not regular but is merely occasional and incidental, which although related to and connected with the regular business of the owner or employer, nevertheless, is not within the usual course of trade, business, profession or occupation of said employer, is to be considered casual employment within the meaning of the Workmen's Compensation Law.

The majority opinion stresses the purpose of the Workmen's Compensation Act which is a social legislation designed to give relief to the workman who has suffered injury from his employment, and hence should be considered liberally and for the benefit of employees and their dependents, and that all doubts as to the right of compensation resolved in their favor. I agree. However, it has been noted that this liberal interpretation of the law and the presumption to be indulged in favor of employees, not infrequently, has been overdone and over extended by trial courts and the Workmen's Compensation Commission, resulting at times in inequality in the application of said law and clear injustice to the employer. That is the reason why in the case of *Catalla vs. Tayabas Lumber Company*^{T supra} this same Tribunal in reversing a decision of the Court of First Instance sentencing the Lumber Company to pay compensation, was prompted to declare:

"We regret to be compelled to decide the question against the appellee's claim. This case should be decided not from a sympathetic point of view which the working class well deserves but in accordance with the proven facts and the law applicable thereto.

*** "Employers should deserve before the law the same consideration as workmen and they should not be held liable for accidents suffered by those who are not their laborers or employees." *** (Italics supplied.)

And in the case of *De los Santos vs. Javier*, *supra*, this Court also reversed the decision of the Court of First Instance in favor of the employee citing the case of *Packett vs. Moretown Creamery Co.* (91 Vt., 97; 99 Atlantic, 638), the language of whose statute is practically the same as that of our Workmen's Compensation Law, and this Court made the following statement:

*** "A creamery company entered into a contract with a builder for the erection of a new creamery building, and one hired by the builder was injured. Held, that such person could not, despite section 63a, declaring that the act should be liberally construed, be treated as a workman of the creamery company and entitled to demand compensation from it, the company not being engaged in the business of erecting buildings this being particularly true as the liability of the creamery company's insurance carrier would be extended to an unthought of length." (Italics supplied.)

Again, in the case of *Philippine Manufacturing Company vs. Geronimo*, *supra*, this Court had to reverse a decision or award rendered by the Workmen's Compensation Commission and ordered that another decision be rendered ordering the independent contractor instead of the Company to pay the compensation. Other similar cases may be cited. I am seriously and truly concerned over the implications and far reaching effects of the majority opinion in so far as it rules that notwithstanding the intervention of a contractor like *De la Cruz*, the

owner or administrator of property over which repair work is done is nevertheless liable for any injuries suffered by the laborer or carpenter employed by the contractor. That is the reason I felt constrained to state the reasons for my dissent and to dwell rather extensively and perhaps elaborately on the subject. Heretofore, and for years and decades, these small and modest contractors like De la Cruz, in the cities and big towns in this country, have by contracts for stipulated sums and for fixed periods of time, undertaken the construction, painting and repair of small factories, business houses, apartment houses and houses for rent, including plumbing and electrical installations in them, almost invariably, furnishing the labor only, and they have performed their task to the satisfaction of the owners and for the profit of themselves as well as the thousands of employees and laborers, skilled and non-skilled, hired by them. Now comes the majority opinion saying that despite the intervention of an independent contractor, if the latter is a small operator and has no capital, in case of injury suffered by a laborer of said small contractor, the owner is liable to pay compensation. Those who would sign the majority opinion may not realize it but the doctrine being laid down by it would surely and suddenly make all these house owners and prospective builders, realize their precarious situation. To play safe and avoid liability, they would by pass, though reluctantly, these small and modest contratistas and go and entrust their constructions, repairs, and installations to the big, moneyed, and established building and construction contractors like Santa Clara Construction Company, Pio Barretto & Sons, Inc., Capitol Construction Company, and others who are in a position to assume and discharge said liability. The work would most likely cost more, but then the owners are relieved from worry and the possibility of facing claims for compensation. This would surely and inevitably spell ruin to all small and modest contractors and their plumbers, painters, carpenters, electricians, laborers, and helpers. In other words, with a stroke of the judicial pen, these thousands of small contractors and their still greater number of men, who form an important sector of our national economy, would be obliterated from the industrial scene, all because, according to the majority opinion, they cannot be considered as independent contractors just because they put up no bonds, which are really unnecessary for the small construction and repair jobs, and they do not count with capital like the big, well established ones.

In conclusion, I believe and hold that under the facts proven in this case, and under the law, De la Cruz should be considered an independent contractor; that as such independent contractor, he employed Rilloraza, and so compensation to Rilloraza should be paid not by Caro but by De la Cruz, not only because of his assumption of such liability as stipulated in his agreement, but because he was the real employer; that even under Section 39 (a) of the Workmen's Compensation Act, Caro may not be regarded as the employer for the reason that, assuming that the house in question was actually rented for purposes of profit, and assuming further that renting one single house can be considered a regular business or occupation, the work being done by Rilloraza on said house was not within but rather outside of the regular business of renting houses; that assuming that Caro was the employer of Rilloraza, still, the employment of the latter was casual under the provisions of Section 39 (b) of the Workmen's Compensation Act, and so, Rilloraza is not entitled to compensation. Consequently, the appealed decision should be reversed.

Reyes, A., Bautista Angelo, and Labrador, JJ., concur.

[*] 97 Phil., 992.

[*] 96 Phil., 941.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.