

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. ALFONSO GATCHALIAN, DEFENDANT AND APPELLEE.

G. R. Nos. 12011-14. September 30, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Alfonso Gatchalian was charged before the Court of First Instance of Zamboanga with a violation of Section 3 of Republic Act No. 602 in four separate informations (Criminal Cases Nos. 2206, 2207, 2208 and 2209) committed as follows:

"That on or about August 4, 1951, up to and including December 31, 1953 and within the jurisdiction of this Court, viz, in the City of Zamboanga, Philippines, the above named accused, owner or manager of the New Life Drug Store, a business establishment in the City of Zamboanga and having under his employ one Expedite Fernandez as salesman in the said establishment, did then and there willfully, and feloniously, pay and cause to be paid to said Expedite Fernandez, a monthly salary of P60 to P90 for the period above-mentioned which is less than that provided for by law, thereby leaving a difference of an unpaid salary, to the latter in the total amount of P1,016.64 for the period above-mentioned."

When arraigned on June 19, 1956, he pleaded not guilty to the charge. On August 29, 1956, his counsel, in his behalf, filed a written motion to dismiss based on two grounds which in substance merely consist in that the violation charged does not constitute a criminal offense but carries only a civil liability, and even if it does, the section of the law alleged to have been violated does not carry any penalty penalizing it. On September 25, 1956, the City Attorney of Zamboanga filed his answer to the motion to dismiss contending that the law which was violated by the accused carries with it both civil and criminal liability, the latter being covered by Section 15 which provides for the penalty for all willful violations of any of the provisions of the Minimum Wage Law. On December 3, 1956, the Court, after hearing the arguments of both parties, as well as some members of the local bar, issued an order dismissing the informations with costs de oficio and cancelling the bail bond filed by the "accused. The court in the same order directed the Regional Representative of the Department of Labor to immediately institute a civil action against the erring employer for the collection of the alleged underpayment of wages due the employees. A motion for reconsideration having been denied, the Government took the present appeal.

The pertinent portion of Section 3 of Republic Act 602 under which appellee was prosecuted, reads as follows:

"SEC. 3. Minimum wage.—(a) Every employer shall pay to each of his employees who is employed by an enterprise other than in agriculture wages at the rate of not less than.—

(1) Four pesos a day on the effective date of this Act and thereafter for employees of an establishment located hi Manila or its environs;

(2) Three pesos a day on the effective-date of this Act and for one year after the effective, date, and thereafter P4 a day, for employees of establishment located outside of Manila or its environs: Provided, That this Act

shall not apply to any retail or service enterprise that regularly employs not more than five employees."

Section 15 of the same law, which treats of "penalties and recovery of wages due", likewise provides;

"SEC. 15. Penalties and recovery of wage due under this Act.—

(a) Any person who wilfully violates any of the provisions of this Act shall upon conviction thereof be subject to a fine of not more than two thousand pesos, or upon second conviction, to imprisonment of not more than one year, or to both fine and imprisonment, in the discretion of the court.

(b) If any violation of this Act is committed by a corporation, trust, partnership or association, the manager or in his default, the person acting as such when the violation took place, shall be responsible. In the case of a government corporation, the managing head shall be made responsible, except when shown that the violation was due to an act or commission of some other person, over whom he has no control, in which case the latter shall be held responsible.

(c) The Secretary is authorized to supervise the payment of the unpaid minimum wages or the wages found owing to any employee under this Act. -

(d) The Secretary may bring an action in any competent court to recover the wages owing to an employee under this Act, with legal interest. Any sum thus recovered by the Secretary on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sums not paid to an employee because he cannot be located within a period of three years shall be covered into the Treasury as miscellaneous receipts.

(e) Any employer who underpays an employee in violation of this Act shall be liable to the employee affected in the amount of the unpaid wages with legal interest. Action to recover such liability may be maintained in any competent court by anyone or more employees on behalf of himself or themselves. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee which shall not exceed ten per cent of the amount awarded to the plaintiffs, unless the amount awarded is less than one hundred pesos, in which event the fee may be ten pesos, but not in excess of that amount. Payment of the amount found due to the plaintiffs shall be made directly to the plaintiffs, in the presence of a representative of the Secretary or the Court. In the event payment is witnessed by the court or its representative, the Secretary shall be notified within ten days of payment that the payment has been made.

(f) No employer, attorney, or any other person, other than the employee to whom underpayment is found due, shall receive any part of the underpayment due the employee; and no attorney shall receive any fee in excess of the maximum specified herein.

(g) In determining when an action is commenced under this section for the purpose of the statute of limitation, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action."

It is clear from the above-quoted provisions that while Section 3 explicitly requires every owner of an establishment located outside of Manila or its environs to pay each of its employees P3.00 a day on the effective date of the Act, and one year thereafter P4.00 a day, Section 15 imposes both a criminal penalty for a wilful violation of any of the above provisions and a civil liability for any underpayment of wages due an employee. The intention of the law is clear: to slap not only a criminal liability upon an erring employer for any willful violation of the acts sought to be enjoined but to attach concurrently a civil liability for any underpayment he may commit as a result thereof. The law speaks of a willful violation of "any of the provisions of this Act", which is all-embracing, and the same must include what is enjoined in Section 3 thereof which embodies the very fundamental purpose for which the law has been adopted. A study of the origin of our Minimum Wage Law

(Republic Act 602) may be of help in arriving at an enlightened and proper interpretation of the provisions under consideration. Our research shows that this Act was patterned after the U. S. Fair Labor Standards Act of 1938, as amended, and so a comparative study of the pertinent provisions of both would be enlightening.

The pertinent provisions of the U. S. Fair Labor Standards Act of 1938, as amended, follow:

"MINIMUM WAGES

SEC. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

"(1)

not less than 75 cents an hour;"

* * * * *

"PROHIBITED ACTS

"SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

"(1)

to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Administrator issued under section 14; * * *

"(2)

to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Administrator issued under section 14;

"(3)

to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or cause to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

"(4)

to violate any of the provisions of section 11 (c) or any regulation or order made or continued in effect under the provisions of section 11 (d), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

* * * * *

"PENALTIES

SEC. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than P10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

"(b) Any employer who violates the provisions of section 6 or 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation", as the case may be, and in addition equal, amount as liquidated damages. Action to recover such liability, may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant costs of the action."

The pertinent provisions of Republic Act 602 read:

SEC. 3. Minimum wage.—(a) Every employer shall pay to each of his employees who is employed by an enterprise other than in agriculture wages at the rate of not less than—

* * * * *

"(2) Three pesos a day on the effective date of this Act and for one year after the effective date, and thereafter P4 a day, for employees of establishments located outside of Manila or its environs: Provided, That this Act shall not apply to any retail or service enterprise that regularly employs not more than five employees."

"SEC. 15. Penalties and recovery of wage due under this Act.—

(a) Any person who willfully violates any of the provisions of this Act shall upon conviction thereof be subject to a fine of not more than two thousand pesos, or, upon second conviction, to imprisonment of not more than one year, or to both fine and imprisonment, in the discretion of the court.

* * * * *

"(e) Any employer who underpays an employee in violation of this Act shall be liable to the employee affected in the amount of the unpaid wages with legal interest. Action to recover such liability may be maintained in any competent court by anyone or more employees on behalf of himself or themselves. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee which shall not exceed ten per cent of the amount awarded to the plaintiffs, unless the amount awarded is less than one hundred pesos, in which event the fee may be ten pesos, but not in excess of that amount. Payment of the amount found due to the plaintiffs shall be made directly to the plaintiffs, in the presence of a representative of the Secretary or of the Court. In the event payment is witnessed by the court or its representative, the Secretary shall be notified within ten days of payment that the payment has been made."

An examination of the above-quoted provisions of the two Acts will show that while in substance they are similar, they however contain some differences in their phraseology and in the apportionment of their provisions. Thus, while Section 15 (a), paragraph 2, of the Fair Labor Standards Act makes it unlawful for an employer not to pay the minimum wage prescribed therein, our Minimum Wage Law does not contain a similar provision. Again, the Fair Labor Standards Act enumerates in one single section all those acts which are declared unlawful and are not spread out in different sections as done in our law. Thus, the acts that are declared unlawful by the former law as enumerated in Section 15(a) are: (1) to transport or deliver any goods in the production of which any employee was employed in violation of Section 6 or Section 7, or in violation of any regulation or order of the Administrator; (2) failure to pay the minimum wage; (3) to discharge or in any other manner discriminate against an employee who has filed a complaint against the employer in relation to the Act; and (4) failure to keep the

record or report required by law or to make a false record or report. On the other hand, our law declares unlawful the following acts, to wit: (1) to pay wages in the form of promissory notes, vouchers, coupons, tokens or any other form alleged to represent legal tender [Section 10 (a) (1)] ; (2) to make any deduction or withhold any amount from the wages of an employee, or induce any employee to give part of his wages by force or intimidation [Section 10(g)]; (3) to commit any act of discrimination against an employee because of certain complaint he has filed or caused to be filed against the employer (Section 13); and (4) to make any false statement, report or record to subvert the purpose of the Act (Section 14), which acts are contained in separate sections mentioned therein. The failure to pay the prescribed minimum wage is not declared unlawful in our law.

It should also be noted that while Section 16 of the Fair Labor Standards Act which provides for the penalties to be imposed for any willful violation of the provisions of the Act specifically states that those penalties refer to acts declared unlawful under Section 15 of the same Act, our law does not contain such specification. It merely provides in Section 15 (a) that "Any person who willfully violates any of the provisions of this Act shall upon conviction" be subject to the penalty therein prescribed. This distinction is very revealing. It clearly indicates that while the Fair Labor Standards Act intends to subject to criminal action only acts that are declared unlawful, our law by legislative fiat intends to punish not only those expressly declared unlawful but even those not so declared but are clearly enjoined to be observed to carry out the fundamental purpose of the law. One such provision is undoubtedly that which refers to the payment of the minimum wage embodied in Section 3. This is the only rational interpretation that can be drawn from the attitude of our Congress in framing our law in a manner different from that appearing in the mother law.

Indeed, the main objective of the law is to provide for a rock-bottom wage to be observed and followed by all employers of an agricultural and industrial establishment. This objective would be defeated were we to adopt a restrictive interpretation of the above penal clause, for an employer who knows that he cannot be amenable to a criminal action would be prone to subvert the law because if he is detected it would be easy for him to pay the underpayment and the corresponding interest as would be the case were he to assume merely a civil liability. This would be a mockery and a derision of the law not contemplated by our lawmaker which would certainly render it nugatory and abortive. We are not prepared to adopt an interpretation which would give such adverse result to a legislation conceived in the lofty purpose of protecting labor and giving it a living wage. If the law is to survive, it must be real, militant and effective.

"The establishment of the maximum wage benefits directly the low-paid employees, who now receive inadequate wages on which to support themselves and their families. It benefits all wage earners indirectly by setting a floor below which their remuneration cannot fall. It raises the standards of competition among employers, since it would protect the fair-minded employer who voluntarily pays a wage that supports the wage earner from the competition of the employer, who operates at lower cost by reasons of paying his workers a wage below subsistence. If, in fact, the employer cannot pay a subsistence wage, then he should not continue his operation unless he improves his methods and equipment so as to make the payment of the minimum wage feasible for him; otherwise the employer is wasting the toil of the worker and the material resources used in the employment. Second methods of operation, progressive and fair-minded management, and an adequate minimum wage go hand in hand." (Explanatory Note to H.B. No. 1476)

Counsel for appellee however entertains a different interpretation. He contends that if Section 15 (a) should be interpreted in a manner that would embrace a wilful violation of any of the provisions of the law we would have a situation where even the officials entrusted with its enforcement may be held criminally liable which is not contemplated in the law. Thus, he contends, the Secretary of Labor may be criminally prosecuted for willfully not using all available devices for investigation [Section 4(c), for not presenting to the Wage Board all the evidence in his possession relating to the wages in the industries for which the Wage Board is appointed and other information

relevant to the establishment of the minimum wage [Section 5(p)], and for not doing all Other acts which the law requires him to do under Section 6. This, he emphasizes, is absurd and should not be entertained.

To begin with, the Minimum Wage Law is a social legislation which has been adopted for the benefit of labor and as such it contains provisions that are enjoined to be observed by the employer. These provisions are substantive in nature and had been adopted for common observance by the persons affected. They cannot be eluded nor subverted lest the erring employer runs into the sanction of the law. On the other hand, the provisions adverted to by counsel are merely administrative in character which had been adopted to set the machinery by which the law is to be enforced. They are provisions established for observance by the officials entrusted with its enforcement. Failure to comply with them would therefore subject them merely to administrative sanction. They do not come under the penal clause embodied in Section 15(a). This is clearly inferred from Section 18(c), of Republic Act No. 602, which provides: "Any official of the Government to whom responsibility in administration and enforcement has been delegated under this Act shall be removable on the sustaining of charges of malfeasance or non-feasance in office." This specific provision should be interpreted as qualifying the penal clause provided for in Section 15 (a).

It is true that Section 3 under which appellee was charged does not state that it shall be unlawful for an employer to pay his employees wages below the minimum wage but merely requires that the employer shall pay wages not below the minimum wage. But failure of such declaration does not make the non-observance of the provisions less unlawful than otherwise, for such provision embodies precisely the *raison d'être* of the law itself. Indeed, Section 3 is the very provision on which all the other provisions of the law are built. Thus, the prohibition against discriminating against any employee because he has filed a complaint or caused to be instituted one against the employer is just a means to insure the effective enforcement of that provision (Section 13); and so the prohibition against the making of a false statement, report or record required to be filed or kept by the law (Section 13); the prohibition against the payment of wages in the form of promissory notes, vouchers, coupons, tokens, or any other form to represent legal tender (Section 10, par. a, sub-paragraph 1) ; and the prohibition against making deductions or withholding any amount from the wages of an employee (Section 10, par. g). These are acts which were declared unlawful because they may be resorted to by unscrupulous employers with the evident purpose of subverting or defeating the payment of the minimum wage. If these supplementary provisions are mere safeguards established by the lawmaker to close every avenue to trickery or subversion on the part of the employer, they cannot be more important and imperative as the central provision fixing the minimum wage without which the law will have no reason to exist. We cannot therefore entertain the claim that because said provision was not declared unlawful it cannot be subject to the penal sanction embodied in Section 15.

It is likewise true that the informations under which the accused was charged only mention Section 3 of the law as the one violated and this section does not contain a penal clause, but this does not make the informations defective. There is no law which requires that in order that an accused may be convicted the specific provision which penalizes that act charged be mentioned in the information. The Rules of Court do not require such designation. In fact, the rule provides that an information, to be sufficient, should state only the name of the defendant, the designation of the offense by the statute, the acts or omissions complained of as constituting the offense, the name of the offended party, the approximate time of the commission of the offense, and the place wherein the offense was committed (Rule 106, Section 5). The rule does not require that it should mention the particular penal provision penalizing the offense.

The final claim of appellee is that inasmuch as the provisions of the law under which he was prosecuted are ambiguous and there is doubt as to their interpretation, that doubt should be resolved in his favor because a penal statute should be strictly construed against the State. This contention must also fail if we are to be consistent with

our interpretation of the provisions of Section 15 (a) of the law. We have stated that that section is clear and unambiguous and covers the provisions embodied in Section 3 of the law, and if such is the case then there is no room for the application of the principle invoked by appellee.

We are therefore persuaded to conclude that the court a quo erred in dismissing the informations filed against the appellee and, consequently, its order of December 3, 1956, subject of this appeal should be set aside.

Wherefore, the order appealed from is hereby set aside. It is ordered that these cases be remanded to the court a quo for further proceedings, with costs against appellee.

Paras, C. J. Padilla, and Endencia, JJ., concur.

CONCURRING

CONCEPCION, J.,

I concur in the foregoing opinion, as well as in the concurring opinion of Mr. Justice Reyes (J. B. L.).

CONCURRING

REYES, J. B. L.,

I concur in the opinion of Mr. Justice Felix Bautista Angelo, particularly in view of the provisions of Sec. 10, paragraph g of the Minimum Wage Act which reads as follows:

SEC. 10 (g). It shall be unlawful for any person, including but not restricted to, any employer to make any deductions or withhold any amount from the wages of an employee ... by force, intimidation, threat, or procuring dismissal or in any manner whatsoever."

If the act declares unlawful to withhold in any manner whatsoever any amount from the wages of an employee, it must necessarily be unlawful not to pay him the wage called for by the Minimum Wage Act. What is the difference between not paying the minimum wage and withholding part of the wage so the balance is below the minimum wage? To underpay is to withhold part of the wage.

The act complained of, therefore, is an offense penalized under the Act. Our duty being to interpret the Act in consonance with its primary purpose to benefit the laborer, we should consider that the only sanction for not paying the minimum wage were to be the payment of interest on the unpaid salary, the situation of the wage earner

would have been in no way advanced and the Minimum Wage Act would be practically nullified, for a laborer is in no position to engage in protracted litigation with his employer. As pointed in the opinion of Justice Bautista Angelo the criminal liability is the only effective sanction under the' circumstances. The rejection of the Tanada amendment merely proves that the Legislature was against heavier penalties at the start, not that it desired to shield anyone from prosecution.

It is not for us to speculate upon the secondary effects of the Act on industry. To foresee them is the task of the Legislature. If it desired to immunize employers against criminal prosecution, as an exception to the general penalty, it could have clearly so stated. On the other hand if it wished to be ambiguous in order to content both Capital and Labor, I think the Court would be advancing the cause of good government by driving home the necessity that laws be carefully framed and clearly worded.

The function of statutory interpretation, in my opinion, is to cure involuntary mistakes and supply inadvertences; not to ferret out of ambiguities a policy that legislators may be afraid or unwilling to express. If it is unconstitutional for the Judiciary to invade the sphere of the Legislature, it is just as unlawful for the legislators to shirk their own duty and divert to the Judges the odium of unpopular measures. *Que coda palo aguante su vela*—each mast should bear its own sail.

DISSENTING

BENGZON, J.,

Concurring in the dissent of Mr. Justice Montemayor, I wish to emphasize that as applied to this case, Sec. 15, subsections (a) and (e) should be read together substantially as follows:

Any person who violates any provision of this Act shall be punished with fines, etc. * * * except that where the violation consists in paying the employee less than the minimum wage, the employer shall be punished by requiring him to satisfy the difference, plus attorney's fees.

I believe subsection (e) punishes the particular "violation" of paying less than the minimum wage. It is a special provision, which under well-known rules of construction, should prevail over the general provision in subsection (a). In other words, although the Act does not expressly say so, subsection (e) is an exception^[1] to subsection (a).

I think it is a mistake to suppose that this interpretation fails to punish the employer who disregards the Act; because the liability imposed by subsection (e) is unquestionably a sanction, penal in nature, which except for the law, would not be demandable. If Juan de la Cruz, by contract, employs Pedro at P3.00 per day in Manila where the law fixes a minimum daily wage of P4.00, Pedro could not recover P4.00 instead of P3.00 (except for this law) because Pedro agreed to the 3-peso wage. Nevertheless, this subsection (e) says, despite such agreement with Pedro, Juan must pay him at the rate of P4.00 a day, plus attorney's fees. He is required to pay what he did not contract to pay, or could not afford to pay. Is not this a punishment imposed on Juan? Remember *ijhat fine*, which is also a punishment consists in the disbursement of money.

But such payment is insufficient penalty, I hear others argue. This case will easily disprove such argument: Under subsection (e) this appellee would have to pay necessarily P1,016.00, plus attorney's fees; whereas under subsection (a) he might be fined P200.00 only.^[2]

However, the majority will counter, we hold that the employer, is liable under subsection (e) in addition to his liability under subsection (a).

Therein lies the trouble; the words "in addition" or words of similar import, were not inserted in subsection (e), as they could have been inserted.

Additional liability, is their prevailing idea. And yet, why should the law impose on the employer (who pays in accordance with a contract freely entered into), additional burdens not imposed on the other employers willfully violating other fundamental provisions of the Act!

It may be argued that subsection (e) is not really a sanction independent of subsection (a), or additional thereto, because it merely repeats the well-known principle that "every person criminally liable is also civilly liable." My answer is twofold: first, attorney's fees are not usually included in such principle—a robber is not required to pay attorney's fees; second, the employee is not really the injured party because he accepted the employment under a contract: "Scienti et volenti nulla fit injuria." There is no violation of any right of the employee for which reparation is due. In the example given, Pedro had no right to require Juan to employ him at P4.00. There is only a breach of the statute, for which the Government can choose, and did choose the proper sanction, namely, payment of the salary differential under subsection (e). The Congress did not choose more than that; contrary to what it did in analogous situations. Take the Usury Law, for instance; it provides "without prejudice to the proper civil action for the recovery of usurious interest paid, violations of this Act shall be subject to criminal prosecution and the guilty person, etc." (Sec. (10)

In the absence of a clear, unmistakable statute, we should not approve two punishments for one and the same misconduct

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[1]Even though "exception" or "except" does not appear in the text of the statute. (82 Corpus Juris Secundum 890)

[2]Anyway, inadequacy of the punishment provided by the statute is never a matter for the judiciary to remedy by interpretation.

DISSENTING

MONTEMAYOR, J.,

To my knowledge, this is the. first time that the Minimum Wage Law is being interpreted, by this Tribunal, as regards the compass and scope of the penalty provided in Section 15 of said law, so that on this subject matter, this will be the first case and a leading' one. The trial court in its order dismissing the information said that it had carefully considered its ruling or order because "it believes that any resolution, one way or another, would be precedent-setting, because until now, the Supreme Court has not directly ruled upon the point."

Under the interpretation given by the majority, any employer who underpays his employees in violation of the Minimum Wage Law (Section 3) would be subject to criminal prosecution. I am afraid that if that is the law, the

prosecuting attorneys and fiscals would have on their hands not only the prosecution of thousands of private employers who may be paying their employees and laborers amounts less than the minimum wage, however small the deficiency, but also hundreds and thousands of provincial and municipal officials, particularly the latter, who are paying their employees, not excluding peace officers like municipal policemen and patrolmen, salaries which are way below the minimum wage of P4.00 a day. It is a well known fact that in this respect, the Government is the first and worst offender. Even first class municipalities cannot afford and naturally do not pay their employees and peace officers the minimum wage; with more reason cannot second class and third class municipalities do so. The majority opinion will have such far-reaching and, to me, unforeseen consequences, at once baneful, undesirable, and hurtful to industry, and disastrous to local government officials who, strictly speaking, are not to blame, that I am constrained to voice my dissent and explain the reasons therefor.

For a better understanding of the adoption of the minimum wage in this jurisdiction, it is well to remember that it was not of the initiative, idea or volition of this country. It was recommended by the Bell Mission which made an economic survey here and in its report, recommended its establishment. Not only this, but it would appear that the enactment of this Minimum Wage Law was made a condition precedent to economic aid to be given, to us by the United States of America.[1]

In connection with the discussion and enactment of this piece of legislation, not only our economists but also our legislators expressed their fears, doubts and misgivings, fully realizing that the country was not perhaps prepared economically for its adoption and operation. But because of our commitment with America,[2] and possibly realizing also the necessity of establishing a fair minimum standard of wages for laborers and employees, the Legislature enacted this law in the nature of an experiment, carefully watching and observing in its operation, execution and observance, its good points and its shortcomings as well, with the idea of later making the necessary changes and amendment. The Legislature was, as it were, venturing out on an uncharted sea; so it had, to be conservative and move with measured steps. Since the law was merely being tried out as an experiment, its provisions could not have been made and intended to be strict and severe, in the sense that because of their severity and strictness, compliance therewith would be difficult, if not impossible, and would result in their nonobservance, and the consequent punishment by fine and prison sentence of those denuded as employers who are unable to comply with said provisions. The net result would be the unjust punishment of innocent government officials and the discouragement and destruction of infant and small industries.

From the explanatory note of Senate Bill No. 202, we may have an idea of the attitude of the Legislature on this particular point:

"One thing to be remembered is that the country has not yet attained that degree of industrialization where wages can be set at fully satisfactory levels from the viewpoints of human values. Compromises must still be made until this full industrial status is attained. Another thing is that hasty and unjudicious action in passing minimum wage laws may be deterrent to private capital which, on the contrary needs to be encouraged to invest in local industries if the industrialization ' of our country must someday be a fact." (Italics supplied).

As the majority opinion correctly observes, our Minimum Wage Law is patterned after that of the United States Fair Labor Standards Act (F. L. S. A.) of 1938, as amended. As I have already stated, the establishment of this minimum wage in this country being a sort of experiment, it being the first time that it was being tried out, and not knowing whether or not it would be a success, it is to be presumed that the Legislature acted cautiously and warily, and even while adopting as a pattern the United States F.L.S.A., it did not wish or intend to make our law more stern and' strict in its enforcement and application, particularly as regards its penalties. But the majority opinion would make our law more rigorous and severe, more comprehensive and more devastating in the application of its penal provisions. For instance, while the F.L.S.A. in Section 16 (a) penalizes only specific

violations of its provisions expressly enumerated, our law as interpreted by the majority opinion, would punish any violation whatsoever, whether enumerated specifically or not. Moreover, while Section A 15 (a) of the F. L. S. A. makes it unlawful for an employer not to pay the minimum wage prescribed by it, our Minimum Wage Law does not contain a similar provision. What our law declares unlawful are certain positive and affirmative acts, such as, paying wages in the form of promissory notes, vouchers, etc.; making deductions or withholding any amount from the wages of an employee, or inducing any employee to give part of his wages by force or intimidation; committing any act of discrimination against an employee because of a certain complaint he had filed against the employer, or making any false statement in any report or record to subvert the purposes of the Act. These acts must have been regarded by the Legislature as serious and so expressly declared them unlawful. However, the mere failure to pay the prescribed minimum wage is not, in our law, declared unlawful. I believe that what the Legislature intended to penalize with fine and prison sentence were only those acts which it enumerated and declared unlawful, not the mere failure to follow and comply with the obligations imposed upon an employer, such as, the nonpayment of the minimum wage.

It will be noticed that our law expressly provides that any employer underpaying an employee in violation of the Act shall be liable to said employee in the amount of the underpayment, with legal interest, plus a reasonable amount for attorney's fees. This amount may be recovered not only by the employee himself, but by the Secretary of Labor on his behalf. In my opinion, this civil responsibility to be enforced with the aid of the Department of Labor, was regarded as sufficient punishment and deterrent on the employer. Being a civil action, the employee only needs preponderance of evidence to win his suit. The Legislature may have been of the belief that application of the penal sanction in the form of fine and prison sentence would be too radical a measure, would scare and discourage new and infant industries, besides inducing violators to resort to underhanded but effective measures to hide and conceal infringement of the law, to say nothing of the added difficulty in securing conviction, which requires not only preponderance of evidence, but proof of guilt beyond reasonable doubt.

To show that the Legislature did not intend to be too severe and stern in the application of this new law which was merely being tried out, while House Bill No. 1732 was being discussed in the Senate, Senator Tañada believing that the bill was too lenient for those who violated its provisions by providing for a fine of only not more than P1,000.00 or imprisonment of not more than six months, he proposed that the fine be increased to not more than P10,000.00—half the amount of the fine provided in Section 16 (a) of the U.S. Fair Labor Standards Act; but the committee sponsoring the bill, through Senator Torres, objected to the proposed amendment as being too excessive and severe, specially at the beginning of the operation of the law, upon which Senator Tañada withdrew his amendment, with the understanding that in a year or so after the promulgation of the law, it will be amended:

"SENATE

" December 22, 1950

'ENMIENDA TAÑADA'

"SENATOR TAÑADA. Mr. President for another amendment, On page 18, Section 15 provides for penalties. Mr. President, I believe that the bill is too lenient for those who violate the provisions of this measure. It only provides for a fine of not more than one thousand pesos or imprisonment of not more than six months, or both. In order to really protect labor we must make the penalty stiffer than what is provided in this bill. So I propose the following amendment: In line 22, delete the word 'one' between the words 'than'. and 'thousand', and insert in its place the word 'ten'—not more than ten thousand pesos.

"EL PRESIDENTE. Que dice el comite?

"EL SENADOR TORRES. Señor Presidente, el Comité siente no poder aceptar la enmienda, en vista de que considera demasiada excesiva la pena, sobre todo, en los comienzos de la vigencia de la ley.

"SENADOR TAÑADA. I then, Mr. President, withdraw my amendment with the understanding: that in a year or so after this Law has been in force, we shall amend it."

"EL PRESIDENTE. Se da por retirada." (Senate Journal, Jan. 5, 1951, pp. 5-6). (Italics supplied).

Going back to the violation of this Minimum Wage Law by the Government itself, it is a matter of public knowledge that employees like clerks in the office of the Municipal Treasurer, and municipal policemen receive as low as P40.00 or P50.00 a month, way below the minimum wage prescribed by the law. Under the interpretation given by the majority, since the word " employer" in the law includes the Government[3] and government corporations, then the municipal mayor, the municipal councilors and the municipal treasurer who knowingly and wilfully pay to their employees and policemen salaries way below the minimum wage, would all be subject to criminal prosecution. Multiply this number of municipal officials by the number of such towns and municipalities in the Philippines which do not and cannot pay the minimum wage to their employees and municipal policemen, which towns and municipalities can be counted by the hundreds, and we shall have an idea of the number of government violators of the law which we have and must prosecute criminally under the majority opinion. Could such mass and wholesale prosecution have been contemplated and intended by the Legislature? And let it not be said that with respect to said Government officials, the only punishment is by administrative action and removal, as provided in Section 18, paragraphs (c) and (d), which read as follows:

"(c) Any official of the Government to whom responsibility in administration and enforcement has been delegated under this Act shall be removable on the sustaining of charges of malfeasance or nonfeasance in office.

"(d) Any person engaged in the administration and enforcement of this Act who is found to have accepted any bribe from or on behalf of any party in interest under this Act shall be summarily dismissed, and criminal action shall be instituted against such person." (Italics supplied).

because those provisions clearly refer only to those government officials entrusted with the administration and enforcement of the law, such as, the Secretary of Labor, the members of the Wage Administration Service, and others.

But the majority opinion says that not to apply the penal sanction to an employer underpaying his laborers or employees—

"* * * would be a mockery and a derision of the law not contemplated by our lawmaker which would certainly render it nugatory and abortive. We are not prepared to adopt an interpretation which would give such adverse result to a legislation conceived in the lofty purpose of protecting labor and giving it a living wage. If the law is to survive, it must be real, militant and effective" (Italics supplied).

In other words, the majority of this Tribunal on its own initiative would make the Minimum Wage Law militant and effective by a blanket and indiscriminate application of Section 15 (a) to all violators of its provisions, whether or not such violation is expressly or specifically declared unlawful by the law itself. Stated otherwise, this Tribunal steps in, nay, rushes in to put teeth in a legislation which it considers toothless and would make effective and militant what it regards would otherwise be ineffectual and inadequate. This Tribunal would, like one unlicensed to practice medicine, prescribe a cure for a supposed legislative malady. I am afraid that is not and has never been the province, much less, the prerogative of the Judiciary. Otherwise, the courts would be indulging in judicial legislation.

If the Minimum Wage Law is found to be inadequate and ineffective, let the Legislature make the necessary changes and amendments. In fact, that was the legislative plan from the beginning—observe the operation and working of the law and then make changes, if deemed necessary. But evidently, the Legislature is satisfied with

the operation, and mode of application of the law, because although approved on April 6, 1951, and made effective 120 days thereafter, in other words, after a seven-year operation, it (Legislature) has not seen fit to introduce any major changes,[4] specially in the application of the penalty.

Anyway, after all is said and done, the least that could be said about the applicability of Section 15(a) of the Minimum Wage law to violations of Section 3 is doubtful. Even brushing aside and not considering the grave doubts entertained by the undersigned as to the applicability of said Section 15 (a) to violations of Section 3, we have in evidence the opinion of the Court of First Instance of Zamboanga and according to it, the opinion of the major sector of the Zamboanga bar, sustaining the view that Section 15 (a) is not applicable to violations of Sections 3 of the Minimum Wage Law. We have the well settled principle in the interpretation of penal laws that in case of doubt, the interpretation favorable to the accused should be adopted. Authorities in support of this principle are not wanting.

"Laws creating, defining, or punishing crimes, and those imposing penalties and forfeitures, are to be construed strictly against the state or the party seeking to enforce them, and liberally in favor of the party sought to be charged. They are not to be enlarged by implications, nor extended to persons or cases not plainly within the meaning of the language employed." (Black on Interpretation of Laws, p. 451).

Said this Court in U. S. vs. Abad Santos, 35 Phil. 243:

"Criminal statutes are to be construed strictly; no person should be brought within them, nor should any act be pronounced criminal which is not made clearly so."

In view of the foregoing, I hold that the penal sanction of the Minimum Wage Law applies only to certain violations of its provisions, that is to say, those acts which are expressly declared by the law itself as unlawful; and that mere nonpayment of the minimum wage is not included in the said penal sanction, the Legislature evidently believing that the civil responsibility of the employer for the amount of the underpayment with legal interest and attorney's fees to be enforced with the aid of the Department of Labor, is enough punishment and deterrent on employers.

[1]Minimum Wage Law" by Emiliano Morabe, p. 2, Explanatory notes on House Bills Nos. 1470, 1474, and 1577.

[2]The Quirino-Foster Agreement of November 4, 1950.

[3]Section 2(b), Minimum Wage Law.

[4]The only change in the Minimum Wage Law was Republic Act 812, amending Section 3, by providing that said law shall not apply to homeworkers engaged in needlework by hand.

DISSENTING

REYES A, J.,

As the majority opinion itself says, "failure to pay the prescribed minimum wage is not declared unlawful in our law" (Rep. Act No. 602). On the other hand, it is doubtful if the penal sanction prescribed in section 15 (a) of that Act—presumably for the acts and practices therein declared unlawful—could be rightfully applied to the act of underpaying an employee, since paragraph (e) of that same section already provides a specific remedy therefor. Considering that penal statutes are strictly construed against the state and in case of doubt courts must adopt the construction favorable to the accused, I vote for the affirmance of the order below and also say that courts should not presume to legislate by putting into the law more teeth than the Legislature has already put into it.

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