Theory and Application of Burden of Proof Presumptions in the Philippines

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(Continued from last issue)

IV.

All this time we have been discussing the Philippine statutory rules on burden of proof and presumptions from the theoretical standpoint. By this I mean, we have so far analyzed and compared them in abstract fashion, without reference to the results of particular cases where their application or interpretation is involved. It remains for us to see how far they accord with the solutions reached in particular cases. Such checking-up is highly important. Statutory rules are after all mere generalizations from previous particular experiences of the country for which such rules are intended. If this view is correct, our Spanish-derived statutes, having been premised on conditions obtaining in Spain at the time, are to be presumed unsuited to Philippine conditions until their usefulness in the just solution of Philippine cases is demonstrated. And the same goes for American-derived statutes. In accordance with this view also, we limit our examination to Philippine cases, an exception being made where cases in other jurisdictions have influenced the decision in the particular case.

A. *Burden of Proof.*

1. Distinction between the two burdens.

In the fifty-three volumes of Philippine Reports, there is practically no case material on the distinction between the two burdens. The nearest attempt to drawing such a distinction is the case of U. S. v. Tria, 17 Phil. 303 (1910), to be discussed later in connection with the burden of establishing negative allegations. The reports are equally barren on the question of whether the burden of persuasion on a given issue ever shifts. The only case that has been found having a bearing on that question is U. S. v. Capisonda, 1 Phil. 575 (1902). In this case, D was prosecuted for homicide. He invoked the exempt-

ing circumstance of acting in the discharge of a duty as an officer. The court, per J. Cooper, said:

> "The defendant, having admitted the killing, has assumed the task of establishing his defense, not that the burden of proof shifted in this case, but it was necessary for him to establish his defense to the satisfaction of the court".

Why this is so may be attributed to the absence of trial by jury in the Philippines. In common-law countries, questions as to the burden of persuasion usually reach the appellate court through the instructions of the trial judge as to which party has the burden of persuasion on a given issue and as to whether such burden ever shifts; questions as to the burden of producing evidence, through the judge's instructions to the jury and also through rulings on motions for nonsuit or a directed verdict. The Philippine trial judge has no function to make such instructions or rulings. True, if D moves for dismissal of the action or demurs to the evidence [47] after P has put in his evidence in chief, a question is presented as to whether P has sustained his initial burden of producing evidence by a preponderance of the evidence or by proof beyond a reasonable doubt; but a Philippine trial judge, in deciding one way or the other, does not, and does not need to, distinguish between the burden of persuasion and the burden of producing evidence; the distinction is only important in common-law courts where sustaining the burden of producing evidence merely takes the issue to the jury and is not equivalent to sustaining the burden of persuasion. True also, in cases where P alleges fact A, and D instead of denying such fact sets up fact B by way of confession and avoidance, the Philippine trial judge will find it necessary to locate the burden of persuasion on facts A and B and distinguish such burden from the burden of producing evidence where at the close of the trial there is an equilibrium of proof on either fact A or B. But such cases are extremely rare, and equally rare is the Philippine trial judge who knows the Thayer theory about the distinction between the two burdens and the non-shifting of the burden of persuasion. Wigmore's observation that rules as to burden of

[47] For the practice in Philippine courts as to motion to dismiss or demurrer to the evidence, see Demetrio v. Lopez, 50 Phil. 45 (1927).

producing evidence will not take root except in countries having jury trials seems to have been verified by Philippine judicial annals.

2. Location of the burden of persuasion.

(a). Burden of establishing affirmative allegations.

Under sec. 297, C. C. P., a party has the burden of establishing his affirmative allegations. If P affirms fact A, and D denies it, no difficulty arises in applying the rule. But if D sets up fact B without admitting fact A, the application of the rule ceases to be a simple affair. Fact B may amount to a mere denial of fact A, in which case the burden is on P. Or, it may amount to an admission of fact A, in which case it becomes an affirmative defense and D gets the burden. That the Philippine Supreme Court has followed no fixed rule in deciding cases presenting such difficulty is illustrated by the following cases:

Lopez v. Tan Tioco, 8 Phil. 693 (1907): Action to recover balance due on account. The only item in dispute was the price at which 7,713.99 piculs of sugar should be charged to D, and credited to P. P alleged she delivered these 7,713.99 piculs of sugar to D and gave instructions to sell on Sept. 29, 1904. D alleged that he received instructions to sell on March 26, 1904, when the market price of sugar was much lower than on Sept. 29, 1904. In this case, the court, per J. Carson, assumed that D had the affirmative and placed the burden on him, citing art. 297, C. C. P.

Go Lu v. Yorkshire Ins. Co., 43 Phil. 633 (1922) was decided differently. In this case, P brought an action to recover on two fire insurance policies. He alleged loss of 66 cases of bolt goods. D alleged only 16 cases were destroyed. It was held, per J. Johns, that P has the burden of establishing the amount of his loss.

Rafferty v. Manila Railroad Co., 47 Phil. 83 (1924): P alleged that pursuant to a resolution of the board of directors of D, he rendered services of the reasonable value of ₱18,680. D, in answer, denies and as a further and separate defense alleged P agreed to render services without remuneration. It was held, per J. Johns. that P had

the burden of establishing that D agreed to pay him for his services.

It might be said that article 1214 of the Civil Code should be summoned to aid us in such cases. But then we would be confronted with the same difficulty, for we would have to decide whether fact B is an affirmation of the extinction of the obligation arising from fact A, or a mere denial of the existence of such obligation. The best way out is to regard the decision in each case as a law unto itself, and to no other; that is to say, the peculiar facts of each case and considerations of fairness and convenience should be the controlling factor.

(b). Burden of establishing negative allegations.

Under sec. 297, C. C. P., a party must establish a negative allegation only when it is essential to his case. Here the difficulty is to determine when such an allegation is essential and when not. In Veloso v. Veloso, 8 Phil. 83 (1907), P brought an action to foreclose a mortgage. The mortgage debt was payable in 8 instalments. Clause 3 of the mortgage deed provided that default in payment of any instalment will give the mortgagee a right to sue for the principal. P, in his complaint, alleged that D had not paid any instalment. D, in answer, made a general denial. Trial court decided for P. D appealed, contending that P had the burden to establish non-payment of any instalment because such non-payment was essential to create an obligation on the part of D to pay the principal; that P had offered no evidence of such non-payment. P contended that D's denial of non-payment of any instalment was equivalent to an affirmative allegation of payment of the instalments due and that therefore D has the burden of establishing such payment since the rule is to put the burden of proof on the party affirming. The opinion of the court, per J. Mapa, was highly scholastic in style. It avoided making a direct ruling on D's contention by saying it would assume that under sec. 297, C. C. P., P had the burden of establishing non-payment of any instalment. But in the very next breath, it practically put the burden of establishing payment of the instalments on D; it accomplished this noiselessly by saying that production of the mortgage deed in evidence raised a presumption under art. 1214 of the Civil Code that the instalments had not been paid. But art. 1214, Civ. C., does not provide for any presumption; it expresses the Spanish-derived rule on burden of proof. The court, then, practically held that under

art. 1214, Civ. C., production in evidence of the mortgage deed established the existence of D's obligation to pay the instalments, and thereby threw on him the burden of establishing its extinction. Relying on this presumption supposed to have arisen under art. 1214, Civ. C., the court went on to say that such a presumption was evidence under art. 1215, Civ. C., and that through this evidence P had sustained the burden of establishing non-payment of the instalments. By a series of assumptions, the court was able to reach what bore every mark of being a predetermined conclusion. It is submitted that both under sec. 297, C. C. P. and art. 1214, Civ. C., and without resorting to circumlocutory reasoning, the court could have directly and properly placed the burden of establishing non-payment of the instalments on P. The duty of D to pay the instalments as they fell due should be distinguished from the duty to pay the principal. The latter arises only upon the non-performance of the former. P's negative allegation was therefore essential to his cause of action. Viewed under art. 1214, Civ. C., production of the mortgage deed in evidence was *prima facie* proof of the existence of D's obligation to pay the instalments, but not of the existence of D's obligation to pay the principal; to accomplish the latter, further proof of non-payment of the instalments was necessary.

An analogous case is Merchant v. International Bank, 9 Phil. 554 (1908). This was an action against the guarantor of a promissory note. D, on appeal, contended that P had not established non-payment by the principal debtor. The supreme Court found as a fact that the only evidence on the point was the production by P of the note in question during the trial. It was held, per J. Willard, that the burden of establishing non-payment by the principal debtor was on P; that once this was established, D would have the burden of establishing payment by himself (D); that P's possession of the note and its production at the trial was *prima facie* evidence of non-payment by the principal debtor.

In this case, the court very properly distinguished between the principal debtor's obligation to pay the note, and the guarantor's obligation; the latter does not arise until the existence and non-fulfilment of the former are established. The burden of establishing non-payment by the principal debtor, a negative allegation, was placed on P because it was essential to his cause of action. To hold in this case that P's possession of the note

was *prima facie* evidence of non-payment by the principal debtor is not the same as to hold, as in Veloso v. Veloso, supra, that possession of a mortgage instrument is *prima facie* evidence of non-payment of instalments due; the inference in the former is justified by common experience, in the latter it is not.

Another difficulty arises when a negative allegation is essential to a party's case, but the opponent has peculiar means of knowing the fact. In U. S. v. Tria, 17 Phil. 303 (1910), Ds were charged of voting at a general election without having the qualifications required by law for voting. The prosecution introduced in evidence: the official registry of persons who registered and voted at the general election; the testimony of old residents of the place that Ds did not hold any office during the Spanish regime and did not possess the educational qualification; testimony of provincial and municipal treasurers that Ds did not possess the property qualification. It was held, per J. Moreland:

> "It thus appears proved by the best evidence procurable that not one of the appellants in this case possessed, on Nov. 2, 1909, any of the qualifications required by the section of the Election Law above referred to. The prosecution had the difficult office of proving a negative. In making proof under such circumstances, it has, perhaps, not presented either the best evidence or the completest evidence. This, however, is due to the fact that what may be considered, technically speaking, the best or the completest evidence is entirely within the control of the appellants themselves, who refused to produce, or, at least, refrained from producing it. Under such circumstances there rests upon the prosecution the necessity of producing simply the best evidence obtainable under the circumstances. * * *
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> "Under the Election Law of these Islands, there is no presumption that anybody is entitled to vote. In fact, the contrary presumption prevails. This presumption, taken in connection with the evidence of the prosecution, clearly and effectively etsablishes a *prima facie* case against the appellants. Their conviction naturally and necessarily follows, unless they overcome the effect of the case made against them. In order to meet a *prima facie* case, that is, in order to destroy its effect and shift the burden of producing further evidence, the party denying it must

> produce evidence tending to negative the claim asserted to a point where, if no more evidence be given, his adversary cannot win by a preponderance of evidence in a civil case, and beyond a reasonable doubt in a criminal case * * *" [48]

The burden of establishing a negative allegation was thus put on the prosecution because it was an essential element of the crime; but a lesser quantum of evidence, viz. "the best evidence obtainable under the circumstances", was required for sustaining the initial burden of producing evidence in view of the opponent's having peculiar means of knowing the fact.

Four cases were cited in support of the decision. An examination of them will show that two go further then U. S. v. Tria and put the burden of persuasion on the accused. In U. S. v. Chan Toco, 12 Phil. 262 (1908), D was prosecuted for smoking opium under sec. 4, Act No. 1461 (thereafter repealed and replaced by Act No. 1761). The statute provided for an exception in favor of persons using opium under prescription of a duly licensed and practising physician. The question was whether the prosecution must allege in the complaint that D did not use the opium under such a prescription. It was held, per J. Carson, that the prosecution need not make such negative allegation. There was also dictum that D had the burden of establishing the smoking of opium under prescription of a duly licensed and practising physician because he had peculiar means of proving the fact. In People v. Boo Doo Hong, 122 Cal. 616 (1898), it was held, per Belcher, C., that in a prosecution for unlawful practice of medicine, D had the burden of establishing that he had a certificate to practice.

State v. Wilson, 62 Kan. 621 (1901) resembles U. S. v. Tria the most with respect to the facts, the point decided, and even the phraseology of the opinion. D was prosecuted under a statute making it unlawful for any person "who has not attended two full courses of instruction and graduated in some respectable school of medicine, either in the U. S. or some foreign country, or who cannot produce a certificate of qualification from some state or county medical society" to practice medicine for pay. The prosecution introduced in evidence the registry of qualified practising physicians where D's name did

[48] The opinion is quoted at some length because it intimates a distinction between the burden of persuasion and burden of producing evidence. It will be noted also that the so-called presumption that a person is not qualified to vote was weighed as and with evidence.

not appear; also, evidence that though not registered, D practised medicine for pay. It was held, per J. Ellis, that the evidence introduced by the prosecution shifted to D the burden of producing evidence.[49]

In Commonwealth v. Thurlow, 24 Pick. 374, D was charged of selling liquor without a license. Unlike U. S. v. Tria, the prosecution produced no evidence whatever that D had no license to sell liquor. D was acquitted, the court holding, per G. J. Shaw, that the prosecution had the burden of establishing want of license.

The rule, as broadly stated in U. S. v. Tria, seems to be fair and equitable. By putting the burden of persuasion on the prosecution in cases of this nature, the rights of the accused are safeguarded. At the same time it gives due regard to the possible inconvenience in the administration of justice if such rule were made absolute and therefore very properly limits the initial burden of the prosecution to producing "the best evidence obtainable under the circumstances". This provides a flexible rule to be applied with reference to the facts of the particular case.

In 1921, another case [50] came before the Philippine Supreme Court raising the same question of law as U. S. v. Tria, but under different facts. D was charged of voting without having the legal qualifications for voting. He admitted he had neither the honorary nor the property qualification. The prosecution produced no evidence that D cannot read Spanish, English, or a native language. Neither did D produce any evidence that he was educationally qualified. It was held, per J. Johnson, that it was no error for the trial court to convict D. U. S. v. Tria was cited in support but the difference in the facts of the two cases seemed to have escaped the notice of the writer of the opinion. It is not impossible, however, to reconcile the two. It may be said that in this later case the best evidence on the issue of whether D. was educationally

[49] The passage in J. Ellis' opinion which obviously inspired the creation in U. S. v. Tria of a presumption that a person is not qualified to vote and to treat such presumption as evidence is as follows:

"Under these circumstances, the state having offered the evidence above cited, D owed it to himself to produce, if he had it, evidence tending to show his qualification to practice. We think that the foregoing evidence offered by the state, coupled with the presumption that D would speak and offer evidence, if any he had, in his own behalf, when his interests so strongly required him so to do, constituted a case sufficient to sustain a verdict, if one had been returned against D".

[50] U. S. v. De la Torre, 42 Phil. 62.

qualified or not to vote is so completely within the control of D as to relieve the prosecution from the initial burden of producing evidence and to shift it—but not the burden of persuasion—on D.

(c) Cases decided without reference to form of the pleadings.

(1) Burden of establishing payment and other modes of extinguishing civil liability.—So far, the Philppine Supreme Court has applied art. 1214, Civ. C., only to contractual obligations. Relying on this article, the burden is placed on the debtor, without reference to the pleadings in the case. In Behn, Meyer & Co. v. Rosatzin, 5 Phil. 660 (1906), P brought an action to recover a balance due on account. He proved the existence of the balance but offered no evidence that it had not been paid by D. D offered no evidence that he paid it. The court, per J. Willard, held:

> "The plaintiff having proved the existence of the obligation, the burden of proof was on the defendant to show that it had been discharged. This was the law in force during the Spanish domination. (art. 1214, Cic. C.). This rule has not been changed by sec. 297 of the present C. C. P. * * * "[51]

In other cases,[52] the Philippine Supreme Court placed the burden of establishing the extinction of a civil obligation on the obligor, without reference to the form of the pleadings and

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[51] Followed in Miller, Sloss & Scott v. Jones, 9 Phil. 648 (1908); Ortiz and Rotaeche v. Melliza, 22 Phil. 132 (1912).

[52] Harry E. Keeler Electric Co. v. Rodriguez, 44 Phil. 19 (1922): Action to recover purchase price of an electric plant sold by P to D. D pleaded payment. During the trial, he sought to prove that he made payment to M, an agent of P. Held, per J. Johns, that the burden was on D to establish authority of M to receive payment. No reference was made to the pleadings or to art. 1214, Civ. C.

In an action to recover balance due on account. D must establish mistake. Gutierrez Hermanos v. Fuentebella, 13 Phil. 74 (1909). So with fraud and deceit. Compañía General de Tabacos v. Obed, 13 Phil. 391 (1909).

A corporation which signed as maker of note must establish signature was for accommodation and that it was ultra vires. Philippine Trust Co. v. F. M. Yap Tico, 52 Phil. 276 (1928).

Debtor must establish exemption of his cattle from attachment and execution under sec. 452, par. 3, C. C. P. Agatep v. Taguinod, 36 Phil. 435 (1917).

without invoking art. 1214 of the Civil Code. So, with the burden of establishing the partial extinction of a civil obligation.[53]

(2) Burden of establishing circumstances exempting from criminal liability.—In a criminal case, where the accused intends to rely on an exempting circumstance, he does not plead such circumstance affirmatively; he only pleads not guilty.[54] If the burden of establishing an exempting circumstance is to be placed on the accused, as the Philippine Supreme Court has done in many cases,[55] it cannot be by reason of the affirmative-allegation rule. Yet, an attempt has been made to extend such rule even to these cases.[56]

The wisdom of making absolute and inflexible the rule that puts on the accused the burden of establishing an exempting circumstance may well be doubted. There are cases where it is difficult to tell whether the assertion of an exempting circumstance by the accused amounts to a *prima facie* admission of criminal intent, or to a mere denial of such intent. This is illustrated in the case of U. S. v. Tañedo, 15 Phil. 196 (1910). Art. 8, par. 8, of the Penal Code exempts from criminal liability "any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of

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[53] Employer who had wrongfully discharged employee must establish latter could have obtained similar employment for the purpose of reducing damages. Alday v. Gay, 7 Phil. 268 (1907). To the same effect, Knust v. Morse, 41 Phil. 184 (1920).

Lessor who had broken contract of lease must establish lessee could have secured another casco (the thing leased) at the same price for the purpose of reducing damages. Cerrano v. Tan Chuco, 38 Phil. 392 (1918).

[54] See sec. 24, G. O. No. 58.

1 Phil. 575 (1902).

[55] Accused must establish acting in the discharge of a lawful duty as an officer provided for in art. 8, par. 11, Penal Code. U. S. v. Capisonda, 1 Phil. 575 (1902).

Accused must establish insanity at the very moment the crime was committed. U. S. v. Hontiveros Carmona, 18 Phil. 62 (1910); U. S. v. Martinez, 34 Phil. 305 (1916). In People v. Bascos, 44 Phil. 204 (1922), per J. Malcolm, this was referred to as "rather strict doctrine", but the case was decided on the ground that even under such doctrine the accused must be acquitted because his insanity at the moment of killing was established.

Accused must establish self-defense as provided for in art. 8, par. 4, Penal Code. U. S. v. Coronel, 30 Phil. 112 (1915); People v. Baguio, 43 Phil. 683 (1922).

In a prosecution for libel, accused must establish the truth of the charges as provided for in sec. 4, Act No. 277. U. S. v. Sotto, 38 Phil. 666 (1918).

[56] "The plea of self-defense is an affirmative allegation which must be established by the accused with sufficient and convincing evidence". People v. Gutierrez, 53 Phil. 609 (1929), per J. Romualdez.

causing it". In this case, D was charged of murder. He testified that he accidentally shot deceased while shooting at a chicken. The Supreme Court, per J. Moreland, found as a fact that there was no evidence contradicting D's testimony. But instead of stopping here and holding that the accused had established the exempting circumstance as provided for in art. 8, par. 8, Penal Code, it went further and quoted with approval State v. Legg, (W. Va.) 3 L. R. A. (N. S.) 1152, and a note thereto at p. 1163 wherein it was said that an accused has no burden of establishing accidental killing by a preponderance of the evidence because such a defense is merely a denial of intentional killing the burden of establishing which is on the prosecution. J. Carson, evidently sensing the inconsistency of this implied dictum with the cases putting the burden of establishing an exempting circumstance on the accused, said in his concurring opinion:

> "I am in entire agreement with the conclusions of the majority in this case.
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> "I think it proper to state, neverthless, that the doctrine laid down in the somewhat loosely worded West Virginia case of State v. Legg, cited in the majority opinion, and in the citation from 3 L. R. A., N. S., cannot be said to be in conformity with the general doctrine in this jurisdiction, as laid down in the decisions of this court, without considerable modification and restriction limiting its scope to cases wherein it is properly applicable".

It would be interesting to know how the Philippine Supreme Court would have acted if the question of whether the accused had the burden of establishing accidental killing were directly and squarely presented. The argument that such a defense amounts to nothing more than a denial of intentional killing cannot be lightly dismissed. It is submitted that the rule generally followed by the Philippine Supreme Court putting the burden of establishing an exempting circumstance on the accused should not be mechanically applied to such cases; considerations of fairness and convenience as shown by the facts of the particular case, rather than any absolute rule, should tip the scale one side or the other.

B. *Presumptions.*

The term "presumption" has been used by the Philippine Supreme Court in four different senses:

1. An unjustified inference.

As though the threefold meaning attached to the term "presumption" in Spanish and Anglo-American law were not sufficient, the Philippine Supreme Court has loaded it with another meaning and has thereby made a term already vague vaguer still. A grain of wheat hid in three bushels of chaff before, is now hid in four. This new office given to the term "presumption" is shown in the following passages:

> "The case does not show conclusively on its merits that the homicide had been committed in order to commit robbery, since this last crime has not been proved, and therefore a mere presumption that the homicide was committed to rob the victims is not sufficient". U. S. v. Baguiao et. al., 4 Phil. 110 (1905), per J. Torres.
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> "Mere presumption that the entrance into the house was made against the will of the owner is not sufficient; it must be proven that the owner was opposed to it in order to determine the existence of the crime". U. S. v. Bailon, 4 Phil. 128 (1905), per J. Torres.
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> "* * * and this being the case, it cannot be established from mere suppositions, drawn from circumstances prior to the very moment of the aggression, that the accused had employed means tending to insure its success without any danger to his person, which constitutes treachery (alevosia) as defined by the Penal Code. The circumstances specifying an offense or aggravating the penalty thereof must be proved as conclusively as the act itself, mere suppositions or presumptions being insufficient to establish their presence according to law. No matter how truthful these suppositions or presumptions may seem, they must not and cannot produce the effect of aggravating the condition of the defendant". U. S. v. Perdon, 4 Phil. 141 (1905), per J. Mapa.
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> The court should not convict on a "mere presumption based on another presumption". U. S. v. Co Chicuyco, 22 Phil. 336 (1912), per J. Mapa.
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> Treachery cannot be "deduced from indicia nor from presumption". People v. Ramiscal, 49 Phil. 103 (1926) per J. Villamor.
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> "These circumstances have been proved in a direct and evident manner and are not mere inferences and pre-

sumptions arising from hypothetical facts". People v. De Otero, 51 Phil. 201 (1927), per J. Malcolm.

There is absolutely no warrant in law or in reason for using the term "presumption" in this sense. No warrant in law, because both under the Spanish Civil Code and under Anglo-American law a presumption cannot arise until the basic fact has been proved. No warrant in reason, because some other term, let us say "conjecture" or "surmise", could have been used without adding another ambiguity to an already ambiguous term. Such use of the term should be abandoned for the sake of more precision and less confusion in Philippine judicial literature.

2. A logical inference.

American justices have used the phrase "presumption of fact" in this sense.[57]

There is no case making a clear-cut distinction between a logical inference and a rebuttable presumption. In U. S. v. Catimbang, 35 Phil. 367 (1916),[58] the distinction was drawn but the permissive effect of the one and the mandatory effect of the other was not explained. As we have said before, a trier of fact is compelled to give effect to a rebuttable presumption once the basic fact, without more, is proved. The other facts proved in the case are of no consequence once the basic fact is proved; the trier of fact must give effect to the rebuttable presumption just the same. When, therefore, we find the Philippine Supreme Court holding that proof of the basic fact, together with other facts proved in the case, gives rise to this or that "presumption", we have a case where the term is used in the sense of a logical inference, not in the sense of a rebuttable presumption. This is best illustrated in U. S. v. Adolfo, 12 Phil. 296 (1908), to be discussed later in connection with rebuttable presumptions reduced to logical inferences by judicial construction.[59]

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[57] U. S. v. Alvarez, 1 Phil. 351 (1902), por J. Ladd; Cariño v. Insular Gov't, 7 Phil. 132 (1906), por J. Willard.

[58] This case is later discussed to illustrate a judicially established rebuttable presumption reduced to a logical inference by subsequent judicial construction.

[59] Other illustrative cases: Circumstances proved held to raise "presumption" of intimidation. U. S. v. Santiago, 1 Phil. 716 (1903). Circumstances found proved held to raise "presumption" of fraud. Alpuerto v. Perez Pastor and Roa, 38 Phil. 785 (1918). Various circumstances held to create "presumption" that mortgage debt was contracted solely by F, not conjointly with others. 45 Phil. 246 (1923).

Why there is practically no case material distinguishing between an inference and a rebuttable presumption and why the Philippine Supreme Court has taken no pains to make clear such distinction, may be attributed to the absence of trial by jury in the Philippines. In common-law courts, questions relating to the distinction between a logical inference and a rebuttable presumption reach the appellate courts through rulings by the judge on motions for nonsuit or a directed verdict, and through the instructions of the judge to the jury. The Philippine trial judge has no function to make such rulings and instructions. If he ever speak of presumptions or inferences in writing his decision, it is rare indeed to find him theorizing as to the distincton between them, or to record the effect of each on his mind—whether a presumption had a mandatory effect in his corraboration, or an inference a permissive effect; he merely states that a certain fact or group of facts raises a presumption or an inference, without telling whether he felt compelled or felt permitted to draw the one or the other. If the appellate court finds the basic fact or facts proved, it matters not whether the trial judge called the conclusion a presumption or an inference for in either case the trial judge had authority to draw them; this, in contradistinction to a common-law court where the jury has authority to decide whether or not it should draw an inference, but not to decide whether it should draw a presumption.

3. A rebuttable presumption.

"Presumption of law" is another overworked phrase in Philippine case law. It has been used in three senses: first, in the sense of a rebuttable presumption;[60] secondly, in the sense of a conclusive presumption;[61] thirdly, as a phrase comprising both conclusive and rebuttable presumptions.[62]

"Presumption de jure",[63] "presumption juris tantum",[64] and "rebuttable presumption of fact" [65] have also been used in the sense of a rebuttable presumption. Cleansing Philippine legal

[60] U. S. v. Catimbang, 35 Phil. 367 (1916); see also Yangco v. Rhode, 1 Phil. 404 (1902) and U. S. v. Enriquez, 1 Phil. 241 (1902), latter using "legal presumption".

[61] Cariño v. Insular Government, 7 Phil. 132 (1906).

[62] Bahia v. Litonjua and Leynes, 30 Phil. 624 (1915).

[63] U. S. v. Alvarez, 1 Phil. 351 (1902).

[64] Gabriel et al., v. Bartolome et al., 7 Phil. 699 (1907); Case v. Heirs of Tuason, 14 Phil. 521 (1909); Bahia v. Litonjua and Leynes, 30 Phil. 624 (1915).

[65] Enriquez v. Sun Life Assurance Co. of Canada, 41 Phil. 269 (1920).

terminology of its obscurities is indeed fast assuming the proportions of a herculean task.

A discussion of all the rebuttable presumption, established in the Philippines either by statute or by judicial precedent, is beyond the scope of this paper. Most of them can better be treated under the different branches of the substantive law to which they relate. Only a few of them which are deemed of interest to students of the law on evidence will here be discussed:

(a) If common-law judges have raised logical inferences to the category of rebuttable presumptions for the purpose of controlling the jury in their function of fact-finding, the Philippine Supreme Court on the other hand has reduced statutory and judicially established presumptions to the category of logical inferences for the purpose of meeting the objection that such presumptions abridge the constitutional rights of the accused.

Sec. 334, par. 23, C. C. P. provides that identity of name raises a rebuttable presumption of identity of person. But in U. S. v. Adolfo, 12 Phil. 296 (1908), J. Carson delivering the opinion of the court and influenced obviously by the apparent conflict between such rebuttable presumption and the presumption of innocence in favor of the accused, construed the former in such a way as to reduce it to a mere logical inference:

> "Par. 23, 334, of the C. C. P., provides that identity of person may be presumed from identity of name when that fact is uncontradicted, but that such presumption is disputable, and may be contradicted by other evidence; and we are of opinion, from a review of the reported cases and from an examination of the grounds upon which this presumption rests, that the rule is applicable in criminal as well as civil cases, modified, however, by the presumption of innocence which always arises in favor of one charged with a crime, the presumption of innocence being sufficient or insufficient to rebut the presumption of identity in accordance with the varying circumstances of each case. If, as in the case at bar, there is no ground upon which to base a reasonable, not a mere whimsical or fanciful doubt as to the identity of person indicated by the identity of name, the mere presumption of innocence is not sufficient in itself to rebut the presumption of identity, though it might be otherwise in cases such as those suggested by

> Greenleaf, where the size of the district or the length of time within which the persons are alleged to have coexisted or other similar circumstances indicate a reasonable possibility that, notwithstanding the identity of names, the persons known by such names are not one and the same."

Prior to U. S. v. Catimbang, 35 Phil. 367 (1916), the Philippine Supreme Court had consistently held that possession of recently stolen property raises a presumption that the possessor stole it until possession is satisfactorily explained.[66] In this case, D was charged of theft of large cattle. He boldly contended on appeal that the presumption of guilt that had been established in previous decisions of the court was an infringement of the constitutional right of accused persons not to be compelled to testify against themselves. After referring to American authorities, it was held, per J. Carson:

> "A number of different views and shades of opinion are set forth in these decisions, and it must be admitted that in the form in which the doctrine has somtimes been announced, it would appear to be subject to the criticism of counsel in his argument on this appeal.
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> "It has sometimes been said that the unexplained possession of stolen property creates a presumption of law that the possessor committed the larceny, and casts the burden of proving the innocent character of the possession upon the accused; and thus stated, it must be admitted that there is some force in counsel's contention that such a ruling may have the effect, in some instances, of destroying the right of the accused to be exempt from testifying against himself, and of declining to testify without having that fact used against him.
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> "According to the modern view, however, convictions in cases of this kind are not sustained upon a presumption of law as to the guilt of the accused. The conviction rests wholly upon an inference of fact as to the guilt of the accused. If as a matter of probability and reasoning based on the fact of possession of stolen goods, taken in connection with other evidence, it may fairly be concluded beyond a reasonable doubt that the accused is guilty of theft,

[66] U. S. v. Gimeno. 3 Phil. 233;, U. S. v. Paguio. 6 Phil 436; U. S. v. Soriano and Villalobos, 12 Phil. 512; U. S. v. Ayardi, 11 Phil. 549; Sideco v. Pascua, 13 Phil. 342; U. S. v. Maligalig, 15 Phil. 222; U. S. v. Solinap, 18 Phil. 77.

judgment of conviction may porperly be entered. The conviction rests upon the evidence introduced by the prosecution—not upon the refusal or failure of the accused to testify.[67]

(b) Relying on article 1215, Civ. C., the Philippine Supreme Court has held that presumptions are evidence and may be weighed as and with evidence.[68] Once such a view is taken,

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[67] The American cases cited in the opinion, viz. Johnson v. Miller, (Iowa) 29 N. W. 743 (1886) and State v. Phelps, (Mo.) 4 S. W. 199 (1887) were not in point; there was no constitutional question involved; the point whether possession of recently stolen property raises a rebuttable presumption or a logical inference was neither directly raised nor decided.

The American case that has been found most nearly alike to U. S. v. Catimbang is State v. Kyle, 14 Wash. 550, 45 Pac. 147 (1896). The question related to the constitutionality of a statute which provided that, in prosecutions for larceny, "proof of possession of the animal by the person accused of stealing the same should be *prima facie* evidence that the accused acquired possession thereof recently, and should have the effect of throwing on the accused person the burden of explaining such possession". The statute was upheld. C. J. Hoyt, delivering the opinion of the court, said such statutory provision was but an extension of the rule that possession of recently stolen property raises a presumption of guilt and that such rule "so far as we are aware" had never been questioned on constitutional grounds. J. Dunbar in a separate opinion said: "I cannot concur in the doctrine, which is at least implied in the majority opinion, that the possession of recently stolen property, if unexplained, raises the presumption of guilt. I think the more modern and better doctrine is that no presumption is involved, but that the possession of recently stolen property is a circumstance, to be considered by the jury, like any other circumstance which may be proven tending to overcome the presumption of innocence. However, as the legislature has seen fit to prescribe this rule in a particular class of cases, and as I am not convinced that it violates any constitutional rights of the defendant, I do not feel at liberty to disregard the enactment, and I therefore concur in the result."

Previous to U. S. v. Catimbang, the Philippine Supreme Court had upheld the constitutionality of sec. 5, Act 702, which provided that a Chinese person found in the P. I. without a certificate of residence shall be presumed to be a Chinese laborer, and as such subject to deportation. U. S. v. Sy Quiat, 12 Phil. 676 (1909). Also, a city ordinance making the existence of any device for tapping electric current in one's premises "sufficient evidence in the absence of satisfactory explanation" of its unlawful use by the owner of the premises. U. S. v. Conato, 15 Phil. 170 (1910). Also, sec. 316, Act No. 355 providing that evidence of soliciting, demanding, exacting or receiving money or thing of value by a customs official shall be *prima facie* evidence that the same was done contrary to law, and shall put upon the accused the burden of proving that such act was innocent and not with unlawful intention; and that receipt of a gift by a custom official shall be *prima facie* evidence of violation of the section. U. S. v. Luling, 14 Phil. 725 (1916). But in all these cases the point whether the statute or ordinance raised an inference or a rebuttable presumption was neither raised nor decided. In view of the fact that U. S. v. Catimbang is analogous, though not exactly similar, to these cases, and in view further of the fact that the former is later in point of time, there is strong reason for supposing that the rule of these earlier cases had been qualified by the doctrine in U. S. v. Catimbang.

[68] Veloso v. Veloso, 5 Phil. 83 (1907); De Leon v. Villanueva, 51 Phil. 676 (1928). See also U. S. v. Lopena et. al., 4 Phil. 224 (1905); U. S. v. Quijano et al, 11 Phil. 365 (1908); U. S. v. Adolfo, 12 Phil. 296 (1908); U. S. v. Tria, 17 Phil. 303 (1910).

the way becomes clear for a theory of conflicting presumptions. It is not surprising therefore to find the Philippine Supreme Court yielding to the charm of that theory which Professor Thayer so strenuously urged Anglo-American courts to resist.

In Rustia v. Ramos, 48 Phil. 292 (1925),[69] P brought an action to have his marriage with D in the U. S. on June 12, 1924, annulled on the ground that D then fraudulently represented herself as single and unmarried when as a matter of fact she was previously married to another man on Sept. 5, 1914. The Supreme Court found as a fact that D was previously married as alleged in P's complaint, and that such previous marriage was valid. The first husband was still living and was present during the trial of this case. D contended that the first marriage should be presumed to have been dissolved, relying on Son Cui v. Guepangco, 22 Phil. 216 (1912)[70] and two American cases.[71] The court, per J. Johns, held:

> "Under the law in the Philippines, adultery is the only ground upon which a divorce can be obtained, and even then, it can only be obtained one year after a conviction for that crime. Hence, we have this situation. Adultery is a crime, and a divorce can only be obtained here upon the ground of adultery. A defendant is presumed to be innocent until he is proven guilty, and to sustain a conviction, the evidence must show that he is guilty beyond a reasonable doubt. This legal presumption is much stronger than any presumption 'that the former marriage has been legally dissolved'. That is to

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[69] See also U. S. v. Villafuerte et al.. 4 Phil. 476 (1905) where presumption of marriage arising from cohabitation with other corroborative evidence in the case was held to outweigh the presumption of innocence of the accused. It must be noted that under the Thayer theory there can be no conflict of presumptions in this case because the presumption of innocence is not a presumption at all; it was invented merely to emphasize the burden on the prosecution of establishing the guilt of the accused beyond a reasonable doubt.

[70] Under the special facts in this case, the court, per J. Moreland, made the dictum that the second marriage would be upheld as valid even to the extent of presuming that the first marriage had been dissolved by divorce.

[71] In Hale v. Hale, 135 pac. 1143 (1913), the court nowhere referred to a presumption that the first marriage had been dissolved by divorce; it only raised the presumption of the validity of the second marriage and held that evidence of the first marriage and that the former husband was still living was not sufficient to overcome such presumption; the court's apparent motive for so holding was to avoid bastardizing the children of the former husband with his second wife. It must be noted that in Rustia v. Ramos there were no children of the second marriage that could have been bastardized by upholding the first marriage.

Cancery v. Whinnery, 147 Pac. 1036, followed Hale v. Hale.

say, that the legal presumption that a person would commit the crime of adultery, for which he must be proven guilty beyond a reasonable doubt, is a condition precedent to obtaining a divorce here, and it is much stronger and more forcible than the legal presumption that a 'former marriage has been legally dissolved' * * *" [72]

It is submitted that the application of the theory of conflicting presumptions in this particular case was unnecessary and conducive only to confusion. Unnecessary, because, first, the court was not bound to follow the dictum in Son Cui v. Guepangco about the so-called presumption that the former marriage had been dissolved by divorce; secondly, because if it had chosen to follow Hale v. Hale, the only question would be whether the presumption of validity of the second marriage was rebutted or not. Conducive only to confusion, because if the court had gone the whole length of applying the theory of conflicting presumptions it could very well have found in D's favor a presumption of innocence of bigamy which together with the so-called presumption that the first marriage had been dissolved by divorce would have outweighed the presumption of innocence of adultery. It would have been far better if the court had stressed the fact that there were no children of the second marriage that could have been bastardized by upholding the first marriage and distinguished it in that respect from Son Cui v. Guepangco and Hale v. Hale.[73]

4. A conclusive presumption.

"Presumption of law" [74] and "Presumption juris et de jure" [75] have been used in the sense of a conclusive presumption.

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[72] It is hard to make sense of the last sentence as reported. Perhaps, it was meant to read as follows: "That is to say, that the legal presumption that a person would not commit the crime of adultery, for which he must be proven guilty beyond a reasonable doubt as a condition precedent to obtaining a divorce here, is much stronger and more forcible than the legal presumption that a 'former marriage has been legally dissolved' * * *".

[73] If the Thayer technique were applied to Rustia v. Ramos, the reasoning would be as follows: P had the burden of establishing the validity of the first marriage not only because he affirmatively alleged it but also because it was essential to his cause of action. Proof of the first marriage raised a presumption of its validity. Proof of the second marriage also raised a presumption of its validity. In this situation, the trier of fact instead of balancing the presumptions should determine whether P had sustained his burden of establishing the validity of the first marriage, weighing the basic facts, and these alone, for whatever probative value they may possess with all the other evidence in the case.

[74] Cariño v. Insular Gov't, 7 Phil. 132 (1906).

[75] Pamintuan et al., v. Insular Gov't., 8 Phil. 485 (1907); Bahia v. Litonjua and Leynes, 30 Phil. 624 (1915): Aguinaldo de Romero v. D. of Lands, 39 Phil. 814 (1919); Radaza v. Enaje, 53 Phil. 149 (1929).

That a conclusive presumption is in legal effect a rule of substantive law was recognized in the following passage:

> "The petitioner, however, insists that although the statute of limitations as such did not run against the Government of Spain in the P. I., yet a grant is to be conclusively presumed from immemorial use and occupation. To say that the presumption of a grant is a presumption of law is, in our opinion, simply to say that it amounts to a statute of limitations; and for a court to hold that the statute of limitations does not run against the Government as to its public agricultural lands, and at the same time to hold that if a person has been in possession of such lands for thirty years it is conclusively presumed that the Government has given him a deed therefor, would be to make two rulings directly inconsistent with each other."[76]

The foregoing discussion of Philippine case law may be summarized as follows:

A. *Burden of Proof*.—Due to the absence of trial by jury in the Philippines, the line of distinction between the burden of persuasion and the burden of producing evidence is as yet but dimly drawn. The phrase "burden of proof" have been mostly used in the sense of burden of persuasion. Rules on burden of producing evidence are practically nil.

No one invariable test for locating the burden of persuasion on a given issue has been applied. In some cases, the form of the pleadings have been noticed and the burden placed on the party having the affirmative allegation in accordance with sec. 297, C. C. P.; when difficult questions arise as to which party has made the affirmative allegation on a given issue, no fixed rule has been followed. The statutory rule that a party must establish a negative allegation when it is essential to his case has also been applied; this rule has been followed even when the opponent has peculiar means of knowing the fact, subject to the qualification that the proponent need then produce only the best evidence obtainable under the circumstances in order to sustain the initial burden of producing evidence. In other cases, the burden of persuasion was fixed without regard to the form of the pleadings. Thus, the burden of establishing payment has been placed on the debtor on the strength of art. 1214, Civ. C., without any inquiry to the

[76] Cariño v. Insular Gov't, 7 Phil. 132 (1906), per J. Willard.

parties' pleadings. Sometimes, the burden of establishing the extinction, complete or partial, of a civil obligation was placed on the obligor without reference to the form of the pleadings and without invoking the aid of art. 1214, Civ. C. By a rule of practice, the burden of establishing circumstances exempting from criminal liability has been generally placed on the accused.

B. *Presumptions.*—Philippine judicial language with regard to presumptions is in a deplorable state of confusion. Not only the term "presumption" but also several phrases including such term have been used in different senses. The Philippine Supreme Court, besides using the term "presumption" in the three senses in which it has been used in Spanish and Anglo-American law, has also used it in a fourth sense entirely without legal justification.

Due to the absence of trial by jury in the Philippines, logical inferences have not been clearly differentiated from rebuttable presumptions. There is no pressing necessity for the Philippine trial judge to have a clear understanding of the distinction between the two, and the Philippine Supreme Court has consequently taken no pains to be so precise as to call a logical inference by its real name, instead of calling it a "presumption" as it has so often done. Even in the rare cases where the Philippine Supreme Court has either expressly or practically reduced a rebuttable presumption into a logical inference in order to avoid constitutional objections, it has not fully explained the distinction between the two.

Presumptions have been treated as evidence mainly due to art. 1215 of the Civil Code. This had led to the balancing of presumptions even in cases where such balancing could lead to no good results.

The similarity in legal effect between conclusive presumptions and rules of substantive law has been recognized.

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