A COMPARATIVE STUDY OF SECTION 63 OF GENERAL ORDERS NO. 58 WITH SECTION 3 PAR. (D) OF THE JONES LAW AS REGARDS THE RIGHT TO BAIL

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CHAPTER I

INTRODUCTION

Bail is usually favored. (U. S. vs. Ravidas, 3 Phil. 121; Ex parte Newman, 38 Tex. Crim. Rep. 165; 70 Am. St. Rep. 740). It is the prime purpose of bail to secure a person's temporary release so that he may properly and adequately defend himself during his trial. The practice has been in vogue for centuries that it may fairly be regarded as an institution in countries which believed in the freedom of life, liberty and the pursuit of happiness. Before a person is adjudged guilty by a competent court, it is his right to be free; if so it is his right to give bail. This rule is not without an exception of which we shall dwell substantially at length in the following chapters. Starting from crude conceptions of what this right imply, it has grown with the growth of the idea that liberty is the rule and custody the exception. The power and the right to bail is English in origin, but the idea stepped beyond the bounds of the English Empire and acquired foothold in American soil during the early colonial days. Massachussetts is the pioneer in constitutional liberties. This is manifested by Clause 18 of the Massachussetts' Body of Liberties which provides: "No man's person shall be restrained or imprisoned by any authority whatsoever before the law hath sentenced him thereto, if he can put in sufficient security, bail or mainprise for his appearance and good behavior in the meantime, unless it be in crimes capital and contempts in open court, and in such cases where some express act of court doth allow it." This was enacted nearly forty years before the Habeas Corpus Act, in 1679, first cured the defect in the writ by providing against delay and for bail, and extending the number of judges who are required to grant the writ. (Stimson, Federal and State Constitutions of the United States, p. 20).

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CHAPTER II

THE PHILIPPINE LAWS ON THE SUBJECT

We shall attempt to compile the laws in the Philippine Islands on the subject of bail in criminal cases.

Sec. 3, par (d).—That all persons shall before conviction be bailable by sufficient sureties except for capital offenses. (Jones Law)

Sec. 63.—All prisoners shall be bailable before conviction, except those charged with the commission of capital offenses when proof of guilt is evident or the presumption of guilt is strong. (General Orders No. 58).

Sec. 543.—If it appears that the prisoner was committed by a judge or justice, and is plainly and specifically charged in the warrant of commitment with a high crime, punishment whereof is capital, he shall not be released, discharged or bailed. (Code of Civil Procedure)

Apparently, the above quoted provision of the Code of Civil Procedure conforms in all particulars to the provision of the Jones Law; while there seems to exist a conflict between the provision of General Orders No. 58 and the Jones Law. They refer to the same subject, only that the Jones Law is more absolute and comprehensive. Following the general rule of statutory construction which governs the interpretation of two or more laws in pari materia, all of their provisions should be given force and effect whenever possible; and the provision of the former law will be considered repealed by the provision of the more recent only when they cannot be reconciled or harmonized in such a way as to give force and effect to all of them. To this we may add that if one is organic and the other statutory, no matter whether the organic law was enacted earlier or later, any statute in conflict with the fundamental law is repealed. The Constitution must be upheld. (Marbury vs. Madison, 1 Crach 137). The case of U. S. vs. Babasa has revealed the attitude of the Supreme Court of the Philippine Islands on the matter of bail.

1. The Case of U. S. vs. Babasa, (19 Phil. 198).—This is a case of robbery in an armed band with murder. The defendant was allowed the bail by the court and Babasa was one of the sureties on the bond. The sureties failed to produce the body of the defendant in court during the trial and the judge ordered the bond forfeited. The defendant was later found to have been killed in an encounter with the constabulary forces.

Later Babasa appeared with his counsel and asked the court to vacate the order of forfeiture on the ground that it is impossible to produce the body of the defendant in court to answer the complaint on account of death. But, notwithstanding, judgment of forfeiture was entered. Babasa appealed and alleged that the lower court was without power to admit the defendant to bail, the offense being a capital one. The Supreme Court of the Philippine Islands after quoting the provisions of par. 4, Sec. 5 of the Act of Congress of July 1, 1902 (which is also Sec. 3 par. (d) of the Jones Law) together with Sec. 63 of General Orders No. 58, concludes:

"From these provisions it is clear that even capital offenses are bailable in the *discretion* of the court before conviction."

No authorities have been cited to support the brief conclusion. General Orders No. 58 contains these words: "when proof of guilt is evident or the presumption of guilt is strong." These words are not found in the Jones Law. Be that as it may, our Supreme Court has said that it is a matter of discretion in capital offenses. So that even if the clause "when proof of guilt is evident or the presumption of guilt is strong," was not inserted in Sec. 63 of General Orders No. 58, the decision of the Supreme Court would have been just the same. A very sound rule has been laid down by the Supreme Court of Mississippi in Ex parte Wray (30 Miss. 673). Said the Court:

"The inquiry is whether the proof in this case is evident or the presumption great,—that is to say, is the offense as shown by the whole testimony, one which must, under the law, be capitally punished; for if so, while a court might, in the exercise of a sound discretion admit a party to bail, he could not certainly claim it as a right. But if the offense is not shown by evident proof or great presumption to be one for the commission of which the law inflicts capital punishment, bail is not a matter of mere discretion with the court, but of right to the prisoner." (See also Ex parte McAnally, 53 Ala. 495.)

Where the proof is not evident or the presumption of guilt not great, bail should be allowed, even in capital cases as a matter of right. Where however such proof is evident or the presumption is great as shown by the evidence, bail in capital cases is not a matter of right but a matter of judicial discretion and is usually denied except under special and extraordinary circumstances. (6 Corpus Juris, p. 955). Such a provision as is found in Sec. 63 of General Orders No. 58 applies only to

persons prior to their conviction, and does not apply where a conviction has been had in a court of competent jurisdiction. And a bond given by the accused after he has been convicted is null, and that the surety on such a bond will be discharged.

2. What Constitutes Capital Offense?—On an application for bail the test to be applied to determine whether or not the offense is bailable, is not in the certainty or the improbability of the capital sentence being imposed, but simply is the offense one for which it may be imposed. Thus the power lodged in the court or jury to impose a milder sentence in certain capital offenses does not render such offenses bailable of right; nor does the probability that, from the peculiar circumstances of the case, the government will commute the sentence or pardon the offense suffice to do so. (6 Corpus Juris, p. 958).

3. Capital Offenses Under the Philippine Laws.—Under the Philippine Laws capital offenses include the following:

(1) Treason, (Sec. 1, Act No. 292)
(2) Piracy, (Art. 154, Penal Code)
(3) Parricide, (Art. 402, Penal Code)
(4) Murder, (Art. 403, Penal Code)
(5) Robbery with Homicide, (Art. 503, Penal Code)

Practically, it seems as if all capital offenses under the Philippine Laws are also capital offenses in other jurisdictions. The list has even been extended as to include others which when applied to this jurisdiction are not deemed capital. All depends upon the Legislature of each particular state.

CHAPTER III

THE COMMON LAW RULE

It was laid down as a principle of the Common law that in capital offenses where the evidence in support of the charge was strong, the accused would not be admitted to bail, the clear reason being that where life was at stake no security would be sufficient to secure an appearance at the trial. It was equally established, however, that if an examination of the evidence did not disclose a strong case of guilt, bail could be allowed; and under extraordinary circumstances the court might release the accused on bail although the evidence of guilt was strong. The rule of the Common Law still applies in England. (3 R. C. L. p. 7). And according to the English practice, the court looks to the written evidence under which the defendant is held and cannot receive extrinsic testimony; that all offenses are

bailable before indictment, unless from an examination of the depositions taken before the committing magistrate, it appears that the defendant is guilty of a capital felony; and that after an indictment for an offense punishable capitally, the court cannot inquire into the merits, for the reason that the evidence on which the indictment was found is not in writing, and if it were, could not be disclosed; and the court having no means of ascertaining otherwise, will, therefore, always imply that the grand jury has not indicted on sufficient proof, and so refuse to bail. But the rules of the Common Law thus established by the English decisions have been in effect abolished by the provisions of our Constitution and statutes in relation to bail in criminal cases. (Ex parte Bryant, 34 Ala. 270).

4. What Are These Extraordinary Circumstances?—They are failing health of the prisoner, one or more mistrials, long delay, or the impossibility of an attempt to escape, or other similar circumstances make it appear to be wise and proper course to pursue. (3 R. C. L., p. 8).

CHAPTER IV

THE LAW IN THE UNITED STATES

In all states of the union, except Georgia, Maryland, Mass., New Hampshire, New York, North Carolina, Virginia, and West Virginia, the right to bail has been the subject of Constitutional protection. The provisions in the various constitutions relating to bail are not uniform, but the most usual provision is that "all prisoners shall be bailable by sufficient sureties except for capital offenses where proof of guilt is evident or the presumption great." Where such provision exists, bail is a matter of right in all cases not embraced in the exception. And the power to admit to bail becomes a matter of judicial discretion in all cases embraced in the exception. (This discretionary power to admit to bail becomes a matter of judicial discretion in all cases embraced in the exception.) This discretionary power should however be exercised with great caution. The power to take bail carries (with it) liability for abuse of it; and the magistrate who abuses such power is liable both to the public and to individuals. (Am. & Eng. Encyc. of Law, II Ed. Vol. III, p. 665; 5 Cyc. 64; Encyc. of Plead. & Practice, Vol. III, pp. 199, 201).

The states of Arizona and South Dakota have, however, departed from the general rule above mentioned. The Supreme

Court of Arizona said that "it is a strict legal right of the prisoner to give bail with but one exception and that is where he is charged with a capital offense and the proof of his guilt is evident or the presumption thereof is great. If the case comes within the exception the granting of bail is not even discretionary, but the right of the person thereto is forbidden by law." (Ex parte Haigler, 15 Ariz. 150). Construing a provision similar to that found in Sec. 63 of General Orders No. 58, the Supreme Court of South Dakota in State vs. Kauffman, (108 N. W. 246), said that "where the offense is not punishable by death, the accused is entitled to bail as a matter of right, which may be taken by any of the persons or courts authorized by law to arrest and imprison offenders; where the offense is punishable by death, and the proof is evident or the presumption great, the taking of bail is forbidden."

5. The Object of Bail.—The danger of escape is the only just ground for denying bail to one accused of any crime, yet not convicted. But something of such danger exists in every case and it increases with the severity of the punishment and the probability of a conviction. Always therefore, these two elements should in combination be taken into account on the questions of accepting bail and the amount. And where the probability of flight are overwhelming there should be no bail. Thus a capital crime with guilt and conviction certain, is of this sort; for in the language of the Scripture, "all that a man hath will he give for his life." Still all offenses are by the common law as now prevailing in a part of some states, bailable not excepting treason and the capital and other felonies; though these high crimes are so only in the discretion of the court, not of right. (Bishop's New Crim. Proc. Vol. I, pp. 204-205). The Common Law rule is stated by Blackstone to be that "whenever bail will answer the same intention" (that of safe custody), "it ought to be taken, as in most of the inferior crimes; but in felonies, and other offenses of a capital nature, no bail can be a security equivalent to the actual custody of the person." For what is there that a man may not be induced to forfeit to save his own life? And what satisfaction or indemnity is it to the public to seize the effects of those who have bailed a murderer if the murderer himself be suffered to escape with impunity? Pushing this rule to its practical consequences, it has been the practice of the American courts to take bail in all cases not capital, where the trial is to be had in the jurisdiction in which the bail is given. And indeed the enactment of ex-

tradition treaties should lead, in all cases of doubt, to a still more liberalization of the rule. (Wharton's Criminal Procedure, Vol. II, 10th Ed. pp. 158). We take occasion to quote the beautiful language of Justice Arnold of the Supreme Court of Mississippi:

"In considering an application for bail before conviction, I am admonished by authority and cannot forget that the object of arrest and imprisonment prior to conviction, is not to punish the accused; but to insure his forthcoming to abide trial and punishment that may be inflicted upon him by the sentence of the law after conviction. Nor can I divest myself of the grateful reflection that, in the land of freedom, it is not until after conviction that the law assumes the aspects of terror, and exacts unconditionally the forfeiture of life, liberty or property. The fabled system of criminal practice which inflicted punishment first and awarded trial afterwards, may have been consistent with the principles administered by the court of Rhadamanthus and his associates, located as it was; but such doctrine has no recognition in the polity of christian or civilized people. The laws which establish and regulate the right to bail are not doubtful or uncertain in this state." (Arnold, dissenting, in Ex parte Hamilton & Ex parte Eubanks, 65 Miss. 147).

At Common Law the test to be applied by the Court to govern its discretion in granting or refusing bail was the probability of the prisoner appearing to stand his trial. In applying this test to the probabilities of each particular case the rule has been laid down that discretion ought to be guided mainly by the three following general considerations; the gravity of the offense, the strength of the evidence, and the severity of the punishment. To these may be added certain special considerations which arise in particular cases. Under the Constitution the discretion of the court in allowing bail is ordinarily controlled by the right of the prisoner to demand it, but, in determining whether or not this right exists, the rule of the common law is still applicable. (Am. & Eng. Encyc. of Law, II Ed., Vol. III, pp. 664-666)

6. Nature of the Evidence.—Now what class of evidence is necessary to produce evident proof or great presumption? Again it has been declared that the constitutional clause "where the proof is evident or the presumption great," indicates the same degree of certainty whether the evidence be direct or circumstantial: the design being to secure the right to bail in all cases except those in which the facts show with reasonable

certainty that the prisoner is guilty with a capital crime. (5 Cyc. pp. 65-66; McCrary vs. The State, 25 Tex. 33). Sec. 11 of the Bill of Rights of the Constitution of Texas provides that: "All prisoners shall be bailable by sufficient sureties, unless for capital offenses when proof of guilt is evident." "This secures the right to bail to all persons accused of crime except in cases where the facts show with reasonable certainty that the accused is guilty of a capital crime. If the evidence whether direct or circumstantial, is clear and strong, leading a well guarded and dispassionate judgment to the conclusion that the offense has been committed; that the accused is the guilty agent; and that he would probably be punished capitally if the law is administered, bail is not a matter of right." (Ex parte Coldiron, et al., 15 Tex. App. 464: Ex parte McAnally 53 Ala. 495). The Supreme Court of Alabama in the case of Ex parte Acree (63 Ala. 234) stated the rule in a different way but it leads to the same result. It has laid down this doctrine: "A prisoner charged with a capital felony being entitled to bail as a matter of right, before conviction except, when the proof is evident or the presumption great, should not be refused to bail when the evidence against him is entirely circumstantial, unless it excludes to a moral certainty but that of his guilt."

The tendency of the courts has been rather toward a fair and liberal construction than otherwise of the law in determining what degree of proof or conclusiveness of presumption is sufficient to justify a denial of bail. This is evident not only from the various expressions used in the decisions, but also from a consideration of the facts upon which the courts have refused to allow bail. Since the general rule is in favor of bail, and to refuse it the exception, the party relying upon the exception must prove it. This exception is in favor of the state. (Ex parte Newman, supra; State vs. Rauffman, supra). But the Supreme Court of the United States in the case of U. S. vs. Steward, 2 U. S. (2 Dall.) 343, 1 Law Ed. 408, said that circumstances must be very strong which will at any time induce the court to admit a person to bail who stands charged with high treason.

7. Conflict of Evidence.—It is said that when there is conflict in the evidence as to the state of mind of the prisoner charged with homicide at the time of the act, it cannot be said that the "proof is evident" and in such case the defendant is entitled to bail. (Ex parte Miller, 41 Tex. 213). But in earlier

decision of the same court, it was held that the evidence of defendant's intoxication at the time of the homicide does not raise any doubt as to the criminal intent so as to entitle him to bail under the Bill of Rights of Texas par. 11, providing that "all prisoners shall be bailable, unless for capital offenses when the proof is evident." It is not all conflict in the evidence that require the granting of bail. (Ex parte Evers, 29 Tex. 539; 16 S. W. 343). But the better rule and the one adhered to by most of the states is that where there has been a conflict of evidence as to the state of mind of the accused at the time of the act of alleged homicide, the proof cannot be said to be "evident" so as to preclude admission to bail. (5 Cyc. 67). And what are we to understand to be the meaning of the word "evident"? Mr. Webster defines it thus: "Manifest, plain, clear, obvious, apparent, notorious." Now unless it plainly, clearly, obviously appear by the proof that the accused committed the capital offense he is by virtue of the constitution and statute entitled to bail. (Ex parte Boyett, 19 Tex. App. 17). It must be remembered that these are preliminary proceedings which fall short of actual trial and proofs shall be of such character as shall not prejudice the defendant in his final trial.

8. Waiver of Preliminary Examination.—It has been the criminal practice of some states that a defendant who is charged with murder in the first degree and has waived a preliminary examination for such offense, not only waives his right to be let to bail, but also to have the facts and circumstances of the alleged offense examined into on a writ of habeas corpus. But to this rule there are exceptions. Where at the time of such waiver of examination, there is good ground to believe that, if an examination is gone into, personal violence will be used against defendants, and under such apprehension an examination is waived, they will not be estopped by reason of such waiver. To be estopped, they must have waived their right to an examination from a free choice, after a fair opportunity to have had an impartial examination. No mere imaginary danger would be enough to justify it, but a well grounded belief, founded upon such information or observation as would be calculated to excite fear of bodily harm in the mind of a reasonable person under like circumstances. (In re Petition of Secrest & others. 36 Kan 725 14 Pac. 144).

CHAPTER V

PRESUMPTIONS AND BURDEN OF PROOF

When we talk of presumptions we refer to cases of application for bail before conviction. The reason being that after conviction, the term is no longer presumption, but (for the want of a better term) proof beyond reasonable doubt. There are two conflicting views on the subject of presumptions. The first is that an indictment in a capital offense does not raise such presumption of defendant's guilt of the crime charged against him as absolutely to preclude the power of the court to go behind the indictment, and investigate the merits of the charge with a view of ascertaining whether the party is entitled to bail, but it raises such presumption against the defendant as to deprive him of the privilege of habeas corpus as a matter of right. For the purposes of his capture and custody such presumption is perfectly conclusive till rebutted. In such a case a general allegation of his innocence is not sufficient to entitle him to the writ. (Ex parte White, 9 Ark. 222). Other jurisdictions have been more absolute as to provide a rule that an indictment furnishes absolute evidence that the proof is evident and the presumption great as regards the right to bail. (Hight vs. U. S. (Ia) 43 Am. Dec. 111). An extended discussion of the latter doctrine is a waste of time and productive of no benefit, since it is obnoxious to the doctrine of presumption of innocence and due process of law. We recognize the fact that due process of law does not necessarily mean judicial process, but we fail to see any judicial or administrative process in the application of this rule.

The Supreme Courts of the following states (Alabama, Arkansas, Florida, Illinois, Indiana, Mississippi, Ohio, Oklahoma, South Carolina, Wyoming and Texas) have adopted the view that an indictment, even in capital cases is simply presumptive evidence of the guilt of the party charged, and that courts should upon application, hear proofs and if the presumption be overcome, admit to bail. This throws the burden of proof upon the petitioner to show that the proof is not evident or the presumption not great of his guilt. If after hearing the whole evidence introduced on the application for bail, it is insufficient to generate in the mind of the court a reasonable doubt whether the accused committed the act charged and in so doing they were guilty of a capital offense, bail should be refused. (In re Thomas et al. 20 Okl. 167). I see no reason why such

a rule should be applied in this jurisdiction. As was intimated in the case of U. S. vs. Ravidas et al. supra, bail in this jurisdiction is usually favored, and it is for the fiscal representing the people of the Philippine Islands to contest and oppose if he chooses, the granting of bail, otherwise the court in the exercise of its sound discretion, admit a party to bail.

The Supreme Court of Indiana has consistently adhered to the doctrine that persons charged with a capital offense and applying for bail, have the burden of showing that the proof is not evident or the presumption strong; that it is the duty of the appellate court to weigh the evidence and pass upon its conflicts as a trial court. Consistently with the theory that the appellants assumed the onus of establishing that the proof was not evident and the presumption not strong, the indictment returned by the properly constituted authority, stands with all the presumptions in favor of its truth, until its force is broken by showing that the grand jury acted upon insufficient evidence. (Brown et al. vs. State, 147 Ind. 28; 46 N. E. 34). Under the usual Constitutional provision, one accused of such an offense must show that the proof against him is not evident nor the presumption great, in order to entitle him to bail, and this cannot of course be done after conviction except under unusual conditions.

In support of the doctrine that an indictment is conclusive against the right to bail, it has been reasoned out that it did not create such conclusive presumption, the defendant held under it by virtue of a warrant based upon it, without other evidence of his guilt, would be entitled to his discharge absolutely. If it furnished no such presumption, it would not justify the exaction of bail or the detention of the defendant. (Bailey on Habeas Corpus, Vol. I, pp. 466-67).

But in this jurisdiction the established procedure is that when admission to bail is a matter of discretion, the court must require that reasonable notice of the hearing of the application for bail be given to the promotor fiscal. (Sec. 66 Gen. Ord. No. 58). And the party applying for bail need not introduce evidence to show that his guilt is not evident or the presumption not great. It is for the fiscal, if he resists the application, to show that guilt is evident or the presumption great that the defendant is guilty of a capital crime, in order that bail may be denied. But it does not require the presentation of further evidence. For as has already been said here, the granting of

bail is the rule, and to refuse it the exception. The burden being thrown upon the fiscal, he must show that the case falls fairly within such exception.

But it seems to be settled that the court of King's Bench as a matter of course, refused bail in all capital cases after return of a true bill, unless some special circumstances usually arising subsequent to such return, supervened; also that in no felony after indictment, was bail regarded or allowed as a matter of right. The foregoing practice of the court of King's Bench in relation to capital offenses, has become a fixed rule in California, Louisiana, New York, Iowa and North Carolina. It is held in those states that after indictment for a capital felony the presumption of guilt is so strong as to be conclusive against admission to bail. (State vs. Mills, 2 Dev. & B. 552; Hight vs. U. S. 1 Morr. (Iowa) 407; Territory vs. Bennoit, 1 Mart. (La) 142; People vs. McLeod, 1 Hill, 377; People vs. Tinder, 19 Cal. 539).

We have discovered only two cases in the federal courts directly upon the question, viz., United States vs. Jones, 3 Wash. C. C. 224, and the celebrated trial of Aaron Burr for treason. In the former case, Jones, one of the defendants, was admitted to bail upon the ground of illness; but as to Resse, another of the defendants, Mr. Justice Washington disposes of the application in the following language: "The bill of indictment being found, we do not feel ourselves at liberty to inquire into the evidence against it." Upon return of the indictment against Aaron Burr application for bail was made to Chief Justice Marshall, who presided throughout the trial. The learned Chief Justice remarked that he "had never known a case similar to the present where such an examination had taken place." He also insisted upon the necessity of producing adjudged cases to prove that the court could bail a party against whom an indictment has been found. But on page 95 he is represented as saying; "I have only stated my present impression. This subject is open for argument hereafter." Mr. Burr was thereafter committed to jail, and whether subsequently any authorities were cited or arguments heard upon the question we are not advised. No ruling thereon or further sentence thereto appears in the volume. It is a significant circumstance that in Virginia at the time when Burr was tried there was no constitutional provision on the subject of bail as in other states.

However the Pennsylvania Court has laid down the rule that "where malicious homicide is charged, to refuse bail in all

cases where the judge would sustain a capital conviction if pronounced by a jury on such evidence of guilt as was exhibited to him on the hearing of the application to admit to bail." (Com. vs. Keeper of Prison, 2 Ashm. (Pa.) 227). This rule did not find favor in Mississippi. We wish here to quote with approval the language of Chalmers, J. in Ex parte Bridewell, (57 Miss. 43) in rejecting the Pennsylvania rule above quoted:

"This rule we think, is as plainly violative of the Organic law, on the other extreme, as the remark of the High Court of Errors and Appeals in the cases above cited. A verdict of conviction where no error of law has intervened will never be set aside unless manifestly wrong, or, as is sometimes said, if there be any evidence to support it. To say that bail will only be granted where there is no evidence showing guilt, or where the proof of guilt is so slight upon the whole testimony that a conviction would be manifestly wrong, is plainly inconsistent with the Constitutional requirement that it shall be granted in all cases except where the proof is evident or the presumption great. The error of the Pennsylvania rule is in failing to give due effect to a verdict of conviction, or in overlooking the vast change it effects in the attitude of the party. By it the legal presumption of innocence is overthrown, all doubtful questions of fact are resolved in favor of the state, and the credibility or noncredibility of witnesses is conclusively established. We think the true rule is announced in Ex parte Wray (30 Miss. 673), namely, that 'if a well-founded doubt' (of guilt) 'can ever be entertained, then the proof cannot be said to be evident nor the presumption great,' and in such case bail must be granted."

Florida is another state who does not believe in the conclusiveness of the indictment as evidenced by the decision in the case of Rigdon vs. State, (51 Fla. 308). It is said that an indictment for a capital offense is a strong prima facie showing that the accused is rightly held in custody and not entitled to bail. But it is not conclusive against the right to bail and may be rebutted by proofs to the contrary.

We believe in the rule announced by the Supreme Court of Texas as applicable in this jurisdiction. It upheld the presumption of innocence and barters the liberty of a person only by due process of law. We quote from Ex parte Newman, supra, the following:

"We hold that the general rule is in favor of bail, but there is an exception to this general rule and that the party relying

upon the exception must prove it. The exception is in favor of the state. Unless the case be a capital one, and the proof is evident of this fact, and unless the proof is evident that the prisoner is guilty of a capital crime, he is entitled to bail. He stands upon the Constitution of this State which grants bail to all prisoners with sufficient sureties; and as before stated, the party relying upon the exception must prove it. We are also of the opinion that the indictment furnishes no proof that he is guilty of a capital crime, much less that he is guilty of a capital crime in which the proof is evident. * * * Entertaining these views, the case of Ex parte Smith (23 Tex. Crim. App. 100) and others following that authority are hereby overruled, and the rule as to the burden of proof above indicated is now established as the mode of procedure in this state." (See also State vs. Kauffman, supra.). The Supreme Court of Montana has taken the same view as announced by the Texas Court. It is the rule in that state that "when an application is made for bail in a capital case, the county attorney, if he resists the application should make some showing that the proof is evident or the presumption great, thus bringing the case within the exception mentioned in the Constitution. On failure to make such showing, the defendant is entitled to bail in all cases; but if such showing is made the court or judge should refuse bail without hesitation." (State ex rel. Murray vs. District Court, 35 Mo. 504, 90 Pac. 513; State vs. Second Jud. Dist. Ct. 35 Mo. 504, 508).

In the United States, murder in the second degree and manslaughter are not capital offenses. Each state has established for itself what circumstances and constituents make the killing murder in the first degree or in the second degree or manslaughter. It is interesting to quote in full the able opinion of Justice Stone in Ex parte Nettles (58 Ala. 274, 276) in announcing his emphatic disapproval of the decision in the Wray's case as regards the constituents of murder:

"The rules for admitting to bail in capital cases, under Constitutions and statutes similar to ours, have been very differently declared in different states. In Ex parte Wray (30 Miss. 673), the majority of the court pronouncing on the constituents of murder, asserted principles which we emphatically disapproved. We cannot too strongly express our condemnation of the popular fallacy, to use no stronger phrase, therein unfortunately countenanced, which we believed is annually rushing scores if not hundreds of our citizens into eternity, red

with their own blood causelessly shed. Until courts and juries learn to place a proper estimate on the sacredness and inestimable value of human life; learn that life is not to be taken to avenge an insult, even though gross; learn that felonious homicide, even willful and deliberate murder, may be committed during a personal, nay mutual recontre; until juries learn that the crime of murder is not expunged from our statute books, nor retained only for the friendless or humble, we may expect the carnival of the manslayer to be prolonged if not intensified. We have been led to these strong expressions by the extroardinary rulings found in the case of Ex parte Wray, supra. We are glad to know that one of the Justices—Judge Handy—spoke out in no ambiguous terms in condemnation of the pernicious doctrines of the majority opinion. He asserted the true principles of the law that have come to us sanctified by the wisdom and philantrophy of centuries: the law takes life regretfully, but with unflinching purpose to protect and preserve human life, by punishing the murderer. What we have said above is intended to have a general application, and is prompted by a strong conviction that it is our duty to place on record our unqualified disapprobation of the doctrine declared in Wray Ex parte. So far as our observation has extended, that case stands alone in the principles it enunciates."

Doubtless, the weight of authority in the United States is that an indictment for a capital offense furnishes a strong presumption of guilt, and this presumption must be applied in all such cases on application for bail; that there must be other facts and circumstances which overcome this presumption before the prisoner can be bailed. (Ex parte Goans, 99 Mo. 193; 12 S. W. 635; 17 Am. St. Rep. 571). But we are not prepared to accept this proposition. Our reason being that the presumption of innocence which attends the accused throughout the trial, is with him upon an application for admission to bail.

The Supreme Court of Virginia has said that whenever the motion to be let to bail is made upon the ground that there is but a slight suspicion of guilt against the prisoner, which of course indicates an examination and weighing of the whole testimony of the case, the court or judge ought not to entertain the motion when it is apparent that the commonwealth is unavoidably deprived of some testimony important in the decision of that question (The Commonwealth vs Rutherford, 5 Rand [Va.] 646) And bail was not allowed in the case where a prisoner having been examined by the county court and remanded

for trial for the offense of feloniously passing two counterfeit half eagles, one of them to J. C. and the other to W. M., two indictments are found against him, in one of which he is charged with passing one of the counterfeit coins to J. C. on the 13th of Oct. 1842, in the other with passing the other coin to W. M. on the same day. Upon trial of one of the indictments, the jury find the prisoner not guilty. It was held that his acquittal in that case does not entitle him to be let to bail in the other. (Summerfield vs. The Commonwealth 2 Rob. [Va.] 767).

A plain and unambiguous provision can be found in section 4440, Code 1915 of the State of New Mexico which provides that:

"The judge of the court where an indictment may be pending may, *in his discretion,* admit to bail any person accused by indictment of a capital crime wherein the proof was evident or the presumption so great that the party so accused was not entitled to bail, after such person shall have been confined in jail for two consecutive terms of court without trial subsequent to the term at which the indictment may have been presented." This section was passed in 1899 and repealed sec. 3403, C. L. 1897. The last mentioned section provided that:

"If any person indicted for any offense and committed to prison shall not be brought to trial before the end of the second term of the court which shall be held after the finding of such indictment, he shall be entitled to his discharge, unless the delay happened on his application." The Supreme Court of New Mexico held that Sec. 4440 is not of a mandatory character but entirely permissive. That an indictment charging a capital offense raises a rebuttable presumption that the proof is evident and the presumption great of the guilt of the accused, and the accused is not entitled to bail until that presumption is overcome. (Ex parte Towndrow, 20 New Mex. 631; 151 Pac. 761). In other words the accused, where he is indicted for murder or other capital offense, has the burden to produce such evidence as may operate to convince the court that he is guilty, if at all, of an offense of such a grade that he is entitled to be discharged on bail. Judge Tallmadge of New York, in a very able review of the opinion of the Court in McLeod's case, published in the appendix to 26 Wend. pp. 697, says in concluding:

"The true rule upon the subject of bail or discharge after indictment for murder, undoubtedly is, for the judge to refuse

bail or discharge upon any affidavits or proof that is susceptible of being controverted on the other side. When, however, the prisoner's evidence is of that positive and certain character that it cannot be 'gainsaid', then the prisoner is entitled to be bailed or discharged, as in this case where the man supposed to be murdered is living; where the prisoner has been tried and acquitted of the same offense; or where the supposed murder was a homicide committed in a war between two nations."

The procedure usually adopted by states having Constitutional or statutory provisions similar to ours, (upon hearing of applications for bail), is that "the court is not, as according to the practice in England, confined to the written evidence taken down before the committing magistrate; but the case is heard de novo, the solicitor and prosecutor are notified to attend, and witnesses are subpoenaed both for the state and for the defendant, and examined before the court which is to decide the application upon the 'evidence produced.' Accordingly, to justify a court in refusing bail, whether before or after indictment found, the judge must be of the opinion, upon the evidence introduced upon the hearing of the application that 'the proof is evident or the presumption great', that the defendant is guilty of the offense in the degree punishable capitally." (Ex parte Bryant, 34 Ala. 270.)

But in this jurisdiction, the practice has done away with the calling of witnesses for both or either side. The proceedings are more or less summary. The inconvenience of restraint pending proceedings to admit to bail, which may be prolonged due to the examination of witnesses, should not be lost sight of. But the court will always give the accused the benefit of any reasonable doubt that may arise in considering the testimony. (Ex parte Bird & Bailey, 24 Ark. 275). The court may even go to the extent of granting the application for bail, in the exercise of a sound discretion, even if it believes that the petitioner may be adjudged guilty in the final trial. But this discretion must be exercised with extreme caution. We are glad to know that the system of jury trial was not imported into this jurisdiction, for in those countries where they are part of the machinery of justice, the court or the judge thereof has always admonished the jury to the end that there may not be a miscarriage of justice, that the granting or refusing bail should not be by them adopted as a criterion by which to determine the guilt or innocence of the accused. The duty of the magistrate in admitting to bail is judicial—involving the exer-

cise of discretion—and therefore an action cannot be maintained against him for refusing to admit to bail, without proof of malice or abuse of discretion. The presumption exists, unless rebutted, that the court's refusal to bail was proper upon the evidence, and that the abuse of discretion must therefore be shown to justify disturbing such refusal upon proceeding in review thereof. (State vs. Madison County Ct. 136 Mo. 323; 37 S. W. 1126). In those cases in which the right to bail exists, such right under the Philippine law may be invoked even after trial but before conviction. But it was held in England that "during trial but before conviction the court trying the prisoner is not bound to bail the convict pending the decision on the point reserved, although he was entitled to be admitted to bail as a matter of right prior to his trial." (Reg. vs. Bird, [1850] 5 Cox, C. C. 11).

Wyoming is one of those states who hold that the indictment furnishes presumptive evidence only of the guilt of the accused. and does not conclusively establish that the proof is evident or the presumption great; the court added:

"In addition it should be said, that the indictment while not of itself conclusive against the right to bail, may be taken into consideration by the court, together with the evidence, in determining the question of admission to bail. It may in a doubtful case, have the effect of turning the scale. It should not be entirely ignored, but it is a circumstance like any other, to be taken into consideration for whatever effect in the light of other facts, and together with them, it may have upon the mind of the court or judge." (State vs. Crocker, 40 Pac. [Wyo.] 680). And a proviso which says: 'Provided, that no person shall be admitted to bail after an indictment has been found against him charging a capital offense', is restrictive of the constitutional right. It entirely disregards in case of indictment, the only exception to the right to give bail embraced in the Bill of Rights. Such a proviso, instead of attempting to render a certain fact conclusive evidence of the proof or presumption which excludes the right to furnish bail, clearly denies bail under certain circumstances stated, in utter disregard of the nature or effect of the proof or presumption. To this extent the legislature cannot go. We understand the rule to be, even with respect to civil rights, that the legislature cannot make certain facts conclusive as evidence (Cooley, Const. Lim. 450); and much less it seems to us, can it declare in a criminal proceeding that a certain fact, such as an indictment found,

shall be conclusive against the prisoner when he seeks to obtain the benefit of a right granted him by the Constitution, and prevent or entirely preclude him from asserting and proving the contrary. As the Constitution is supreme, and neither the legislature nor the courts can disregard it, and as the rights which it guarantees to the people were intended to be and should be upheld, we have, in view of this and all the foregoing considerations, arrived at the conclusion that, notwithstanding the statute, a person charged with a capital offense by indictment, is bailable, unless the proof is evident or the presumption great." (State vs. Crocker, supra).

9. Character of Discretion.—Lord Mansfield speaking of the discretion to be exercised in granting or denying bail, said: "But discretion when applied to a court of justice means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague, and fanciful; but legal and regular". (Rex vs. Wilkes, 4 Burr. 2527, 2539). As said by Chief Justice Marshall: "regulated according to the usages of law." And the usages of the law were to be found in the common law and the practice of the courts. The nature and circumstances of the offense and of the evidence should also be taken into consideration. We may cite an instance where the Chief Executive consents to the admission to bail. And as a striking illustration of this kind is the admission to bail of Jefferson Davis, when under indictment for treason, with the consent of the President of the United States. (Wharton's Crim. Proc. Vol. 7, 10th ed. 161). The writer has known of no instance of a similar kind that had ever happened in the Philippines since the implantation of American sovereignty. There are cases where a person charged with a capital offense has refused to escape though an opportunity has been afforded him to do so. Undoubtedly, the attendance of the accused to stand his trial will follow, and the court may, in the exercise of a sound discretion admit him to bail. (Ex parte Alexander, 59 Mo. 598).

10. Hearings on Application For Admission to Bail.—Upon the arrest of one charged with a capital felony, and who desires to be let to bail, the question then arises: Is the court in which the information is filed and who has jurisdiction of the offense be compelled to hear testimony on the motion to admit to bail, or shall such testimony be heard only during the trial? There

are two opposing views on the question. In the case of Kendle vs. Tarbell (24 Ohio St. Rep. 196), two motions for writs of Mandamus were filed against Judge Tarbell. The Court said:

"The refusal of the court to hear testimony on the motion to admit to bail, furnishes no ground for interference of this court by mandamus. We are not called upon by the facts of this case to enter into an examination of the circumstances under which it would be competent and proper, if at all, for the court in which an indictment is pending for a capital offense to hear testimony, otherwise than on the trial, for the purpose of showing that the offense was in fact bailable. * * * There were no special circumstances relied on as grounds upon which the court was asked to entertain the motion. It seems to have been regarded as the right of the party to have the testimony heard. We think otherwise, and that the court properly refused the application." Accordingly, the motions were overruled. But the case of Lynch vs. The People, (38 Ill. 495), furnishes the contrary view. In this case William Lynch was indicted for murder at the Nov. term 1864. After indictment was returned into court, the defendant being in custody, presented his motion in writing in open court, to be admitted to bail, and that the court should hear the evidence in the case, with a view to determine whether the grade of the offense would entitle him to that character of relief. The court said:

"The Circuit Court might well have heard the evidence and inquired into the grade of the alleged offense, with a view of allowing or refusing bail, as might appear proper upon the facts. The mere fact that a grand jury has found an indictment for murder does not preclude an inquiry into the facts of the case, to ascertain whether the offense may not be of such grade as to entitle the prisoner to bail.

"Should an innocent man be indicted for murder as is sometimes done, it would be gross injustice to require him to lie in jail perhaps for months, until a trial could be had, and without an opportunity of asking an investigation with the view of obtaining bail.

"We know that a party may, under an indictment for murder, be convicted for manslaughter, and doubtless grand juries are often controlled by that consideration in refusing, as is generally the case, to find indictments for a lesser offense. It would be very hard, when the law declares that if the offense be of a lower grade than murder, it shall be bailable, that the accused should be concluded upon that question until final trial,

upon the mere finding of a grand jury, which is necessarily based, for reasons of public policy, upon a mere ex parte examination.

"And while we think an inquiry into the facts should always be made upon a proper application of the prisoner, for the purpose indicated in the motion, we need hardly suggest that in view of an indictment having been found for the higher offense, courts and judges should proceed with great caution in their examination of the facts, that the prisoner may not be improperly admitted to bail, and only in case he is clearly entitled to such relief."

This latter view seems to be supported by the weight of authority and we do not doubt its applicability in this jurisdiction. Otherwise Sec. 66 of Gen. Ord. No. 58 would have been useless and should not have been enacted. But it was the intention of the legislator to establish a summary proceeding distinct (though preliminary) from that of the trial on the merits. It has been suggested, however, as a corollary to the above rule that the power to bail implies the power to hear all legal testimony which may influence the decision of the motion; that the judge under such circumstances, shall hear testimony other than the depositions taken on the prisoner's examination. (The Commonwealth vs. Rutherford supra; Ullrey vs. Commonwealth, 8B. Mon. (Ky.) 3). We are not prepared to assent to this last assertion of a principle, for it would be deviating from the established procedure in these Islands.

Fortunately, we have the case of Montalvo vs. Santamaria (R. G. No. 34136, Oct. 2, 1930) confirming in principle the doctrine laid down in Lynch vs. The People, supra. It was a petition for a writ of mandamus and the amended prayer was for an order directing the respondent judge to pass upon the question of whether or not the proof of guilt is evident or the presumption of guilt is strong with a view of ascertaining whether or not the offense charged in bailable. The circumstances which gave rise to the petition for a writ of mandamus are these: Montalvo having been charged of the crime of murder, was arraigned before Judge Santamaria of the Court of First Instance of Manila, Branch I. He presented a motion asking the Court to fix the bail for his temporary release in accordance with Sec. 63 in connection with Sec. 66 of Gen. Orders No. 58. When the motion came for hearing, the respondent Judge refused to investigate the records of the case whether proof of guilt is evident or the presumption of guilt is strong,

relying upon Sec. 3, par. 4 of the Jones Law; that said provision of the Jones Law did not give him discretion and in fact prohibited him, when the charge is murder, from allowing the accused to bail. The Supreme Court granted the writ and ordered him to exercise his discretion conferred upon him by law to decide whether in the instant case there is sufficient evidence or strong presumption of the culpability of the accused, and to use his *discretion* in granting or denying the provisional liberty prayed for. But it must be remembered that when the judge decides that when the proof of guilt is not evident or the presumption of guilt is not strong, the accused can demand bail as a matter of right, and only in the contrary case is it a matter of discretion. Decisions are too numerous to be cited here holding this view and it seems to be the decided weight of authority. Justice Malcolm dissented from the majority opinion, and approached the subject from the point of view of Constitutional Law. We shall quote in full his opinion and the reasons in support thereof in order to give the readers an opportunity to see for themselves whether the condition of our laws on this subject warrants a departure from the general rule.

"The question at issue in these proceedings is whether the provision of the Organic Act 'that all persons shall before conviction be bailable by sufficient sureties, except for capital offenses,' or 'that all prisoners shall be bailable before conviction, except those charged with the comission of capital offenses when proof of guilt is evident or the presumption of guilt is strong," should be given effect. The difference in phraseology between the two quoted portions of the law will not escape attention, the section of the Code of Criminal Procedure being identical with that found in most of the State Constitutions. To my mind, there can be but one answer to the question, and this is that the Organic Act, being organic, is controlling. As announced in a long series of cases, when the subject matter has been covered by Congressional legislation, this operates as a specific limitation on the legislative power. When Congress announced that persons shall be bailable before conviction be not bailable for capital offenses, that was the end of the matter, whether right or wrong. The decision in the case of U. S. vs. Babasa, (1911) 19 Phil. 198, contains nothing to the contrary when clearly examined, for that was a case involving the forfeiture of a bond, and the point now under consideration was not there considered.

"It is however argued that because the Organic Act granted jurisdiction to the courts by, in effect, providing that the said jurisdiction could be added to but not diminished, thereby the Code of Criminal Procedure was confirmed. The fallacy in this argument is that the granting of jurisdiction was contained in the same Organic Act which prohibited bail for capital offense. Since the matter was specifically covered by Congress, the general grant of jurisdiction must be understood as limited by the specific legislation. What Congress meant was that the courts should continue to exercise the jurisdiction theretofore vested in them, but that this jurisdiction should not extend to the allowance of bail for capital offenses." (Johns, also concurring and dissenting).

In other words, Justice Malcolm maintains that the Jones Law on this subject has repealed Sec. 63 of Gen. Orders No. 58 and the only law now is that found in Sec. 3 par. 4 of the Jones Law a provision of similar import found in the Act of Congress of July 1. 1902. And concluding, the learned Justice said that the lower court was right when it refused to exercise his discretion where the charge is for a capital felony.

The rule has been tempered in this jurisdiction, by leaving to the judge the matter of whether to admit or to refuse bail upon the papers of the case. A hearing is had under Sec. 66 of Gen. Ord. No. 58, but on this hearing no witnesses are examined, but the question centers upon the sufficiency of the papers of the case whether the accused could lawfully be bailed. But the investigation with a view to granting or denying bail should not be abused. In State vs. Collins, (10 N. D. 464, 88 S. W. 88), the Court has applied the wholesome rule that, in denying an application for bail "neither the facts nor the law in such cases will ordinarily be discussed by the court, lest it prejudice the rights of the defendant on his final trial." The Court then continued: "We have also reached the further conclusion that any extended presentation or discussion of the evidence at the hands of the court. in advance of the trial of the case upon the merits, would be manifestly improper. In our opinion the court would be trenching upon delicate and dangerous ground should it attempt to pass upon the crucial question to be determined hereafter by the jury impanelled to try and decide upon the entire matter of the guilt or innocence of the accused. Upon such considerations we are constrained to refrain from any discussion of the evidence or the law applicable thereto." Long before this rule has been announced in North Dakota, the

practice has already been uniform and well settled by the decisions of the Supreme Court of Texas since its organization. It has stated the rule to be "that neither the facts nor the questions of law presented in the record will ordinarily be discussed, lest, perchance, the rights of the applicant might be thereby prejudiced on his final trial." (Ex parte Rothschild, 2 Tex. App. 587). Even if the defendant acted in self defense, the law of self defense will not ordinarily be discussed on an application for bail in a murder case, since a party charged has all the presumption of innocence and is entitled to bail as a matter of right unless the proof is evident or the presumption great that he is guilty. (Ex parte Harwick, 7 Okl. Cr. 572).

I do not hesitate to say that the rule stated in State vs. Collins and in Ex parte Rothschild is in accord with the established procedure in this jurisdiction. For to introduce evidence at this stage of the proceedings, is premature and prejudicial to the rights of the defendant to a fair and impartial trial. It would produce a feeling of prejudice in the mind of the judge against the accused, and not much labor is necessary to convince the judge of the guilty character of the accused when a trial on the merits is had. Such was not the intention nor was it countenanced by Sec. 66 of Gen. Ord. No. 58. It would be stretching the imagination too much and doing violence to a provision, the beneficent effects of which have already been enjoyed by those who had a chance to invoke the same.

The proper practice in a case where bail is improperly refused by the lower court is for the accused to petition the Supreme Court for a writ of habeas corpus, and such other remedial process as may be necessary to render its control effectual, setting forth under oath such a state of the case as will show that the lower court erred to his prejudice and that he was entitled by the case then made to the relief which he seeks. (Ex parte Croom, 19 Ala. 561). If the Supreme Court deems the showing prima facie sufficient to entitle the accused to bail, the writ of habeas corpus and certiorari will be awarded to bring before the Supreme Court the body of the prisoner, and the proceedings had in the court below, so that if upon the full hearing upon the return of the writs, the prisoner should be entitled to bail, he may be allowed to give bail. But instead of the writs of habeas corpus and certiorari issuing from the Supreme Court, an agreed statement of the facts and proceedings had before the lower court may be submitted by counsel on both sides and if the Supreme Court decides that the prisoner is en-

titled to bail and so orders, he shall be admitted to bail, and the Supreme Court may compel compliance with such order by mandamus, although the judge below is of the opinion that said order is unauthorized by law, and that the bond would be void. But the Supreme Court in reviewing a denial of bail should consider that fact as well as all the evidence and the presumption of innocence, and if the evidence is clear that an offense has been committed, and that the accused is guilty and will probably be punished capitally, the order denying bail should be affirmed. (Carr vs. State, 93 Ark. 585, 122 S. W. 31).

CHAPTER VI

APPLICABILITY OF THE DOCTRINE PREVAILING IN THE UNITED STATES TO THE PHILIPPINES

Interpreting the same provision as is found in sec. 63 of Gen. Ord. No. 58, (Sec. 6 of the State Constitution of North Dakota), Chief Justice Wallin said:

"In our judgment, the constitution by its own terms guarantees the right to bail before trial in capital cases, unless the proof of the commission of the capital offense is evident or the presumption thereof is great; and we are further of the opinion that said section of the State Constitution does not forbid bail in a capital case where the proof of guilt is evident or the presumption thereof is great. As we read section 6 of the Constitution, that section is silent as to the granting or withholding bail in a capital case where the proof of guilt is evident or the presumption thereof is great. On the one hand, the Constitution does not give the right to bail in the class of cases last mentioned; and on the other hand the Constitution does not inhibit the legislature from doing so. In support of our views on this feature of the case we cite People vs. Tinder, 19 Cal. 539; 81 Am. Dec. 77. In that case Mr. Justice Field, speaking for the court, and in construing a constitutional provision identical with that under consideration, uses the following language: 'The admission to bail in capital cases, where the proof is evident or the presumption is great, may be made a matter of discretion and may be forbidden by Legislation, but in no other cases. In all other cases the admission to bail is a right which the accused can claim, and which no judge or court can properly refuse.'" (State vs. Collins, supra).

To put the matter in a nutshell, American rule made it a matter of discretion upon the court to grant bail in all capital cases where proof is evident or the presumption great; and in all other cases the admission to bail is a matter of right which could not be properly refused. But we don't stop here. After a fair review of the various Constitutions and statutes of the different states as cited in the cases, the writer has found out that these states do not have a provision as found in Sec. 3 par. (d) of the Jones Law. In other words, they have only one law on the subject of bail, the provision of which Sec. 63 of General Orders No. 58 is an exact copy. It is either statutory or one which has been made the subject of a constitutional provision. In so far as said Sec. 63 is concerned, we adopt the rule stated in the beginning of this paragraph. But in the Philippine Islands we have two laws—one statutory and the other Organic, and apparently contradictory. Members of the Bench and of the Bar are in hopeless disagreement. But notwithstanding this discouragement, it has only inspired the writer to draw legitimate conclusions taking into consideration the nature, purpose and spirit of the Organic Law.

CONCLUSION

(1) That it was not the intention of Congress when they enacted Sec. 3 par. (d) of the Jones Law, to introduce into this jurisdiction a different practice and procedure in the matter of admission to bail in capital offenses; it is therefore doing the utmost violence to all rules of construction to contend that in this law [Jones Law, Sec. 3 par. (d)] dealing with the same subject-matter, a different meaning had, without indication or motive, been imputed into the words;

(2) That the Supreme Court of the Philippine Islands in so holding that "even capital offenses are bailable in the discretion of the court before conviction", have only followed the trodden path chosen by respectable courts and distinguished authorities;

(3) That it would be begging the question to say that the omission of the words "when proof of guilt is evident or the presumption of guilt is strong" from Sec. 3 par. (d) of the Jones Law amounts to a complete overhauling of the established system of procedure in these Islands, imposed as it was by the

same sovereign state that created the Jones Law, and much less the fact that the Jones Law was not intended to embody matters of procedure and evidence;

(4) The result of this comparative study is, therefore, nothing else than the fact that there is no conflict between the Jones Law and General Orders No. 58 on the matter herein dealt with.