SPECIAL PROCEEDINGS, EVIDENCE, AND LEGAL AND JUDICIAL ETHICS: 1952

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The law of evidence and generally the whole subject of procedure supply fields were changed may properly be made with a freedom even greater. The considerations of policy that dictate adherence to existing rules where substantive rights are involved apply with diminished force when it is a question of the law of remedies.[1] Justice Cardozo made this statement against the background of the whole judicial process. It was a conception born of a clear understanding of the evolution of the remedial laws with all its attendant problems and complexities. It would indeed profit much a student of law to study the correlative implication of this terse statement among the judicial pronouncements of his own Supreme Court even if only to have a glimpse of the legal truisms at once intelligible to the elect few.

I. SPECIAL PROCEEDINGS

A. Settlement of the Estate of Deceased Persons:

1. *Appointment of administrator although the estate has no debts and all heirs entitled to share in its distribution are all of age.* The Rules of Court provide that if the decedent left no debts and the heirs are all of age, or the minors are represented by their judicial guardians, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the Register of Deeds, and should they disagree, they may do so in an ordinary action for partition.[2] The Supreme Court, however, in the case of *Rodriguez v. Tan*,[3] stated that this particular provision does not preclude the heirs from instituting administration proceedings, even if the estate has no debts or obligation, if they do not desire to resort for good reasons to an ordinary action of partition. Said section is not mandatory or compulsory as may be gleaned from the use made therein of the word *may*. The word *may* is used not only once in the whole section which indicates an intention to leave the matter entirely to the discretion of the heirs.

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[1] CARDOZO, NATURE OF JUDICIAL PROCESS, 156.

[2] Sec. 1, Rule 74, Rules of Court.

[3] G. R. No. L-6044, prom. Nov. 24, 1952.

2. *Probate of will; Taking of deposition of ailing instrumental witness within the province.* Under the provisions of the Rules of Court, when the will is contested, the deposition must be taken if some or all of the subscribing witnesses are present in the Philippines but outside the province where the will has been filed.[4] In *Singson v. Florentino* [5] one of the subscribing witnesses was ill and upon being informed of the fact, the court manifested its desire to go to the house of the ailing witness to take his testimony. The oppositors prevented the move and agreed to the mere taking of the witness's deposition. In the taking of the deposition, the oppositor was represented by his counsel. While the taking of the deposition was not made in strict compliance with the rule,[6] the Court said, the deficiency, if any, has been cured by the waiver evinced by counsel for oppositors which prevented the court from constituting itself in the residence of the witness. The deposition may also be justified by interpreting section 11, Rule 77, in connection with section 4, (c), Rule 18 [7] of the Rules of Court relative to the taking of the deposition of witness in ordinary cases when he is unable to testify because of sickness. Interpreting and harmonizing together these two provisions we may draw the conclusion that even if an instrumental witness is within the seat of the court but is unable to appear because of sickness, as in this case, his deposition may still be taken, for a different interpretation would be senseless and impractical and would defeat the very purpose which said Rule 77 intends to serve.

3. *Allowance of will which might be proved outside of the Philippines.* In *Dalton v. Giberson* [8] the Supreme Court held that section 635 of the Code of Civil Procedure which provides that "a will made out of the Philippine Islands which *might be proved and allowed* by the laws of the state or country in which it was made, may be proved, allowed, and recorded in the Philippine Islands, and shall have the same effect as if executed according to the laws of these

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[4] Sec. 11, Rule 77.

[5] G. R. No. L-4603, prom. Oct. 25, 1952.

[6] Sec. 11, Rule 77.

[7] Sec. 4(c), Rule 18, provides in part: "At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice, thereof, in accordance with any one of the following provisions:

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(c) The deposition of a witness, whether or not a party may be used by any part for any purpose, if the court finds. * * * (3) that the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment; * * *."

[8] G. R. No. L-4113, prom. June 30, 1952.

Islands," is still in force and has not been abrogated by Rule 78 of the Rules of Court.[9] In reasoning out its decision the Court opined that the provision of section 635 of the Code of Civil Procedure is substantive in nature for it creates rights for the beneficiaries of the will and therefore could not have been repealed by the Rules of Court for said Rules repealed only those provisions of the Code of Civil Procedure which are procedural in nature.[10]

4. *Appointment of Special Administrator.* The cases in which a special administrator may be appointed are specified in section 1, Rule 81[11] and section 8, Rule 87.[12] The case of *Reluzio v. San Jose*[13] pronounced the doctrine that when there is a duly appointed regular administrator and the case neither comes under section 1, Rule 81 nor under section 8, Rule 87, the probate Judge exceeds his jurisdiction if he appoints a special administrator.

5. *Compensation of Executors and Administrators.* The executor or administrator is entitled as compensation to four pesos per day of his services or a commission upon the value of so much of the estate as has come into his possession and disposed of by him in payment of debts, expenses, legacies or distributive shares or by delivery to the heirs of the deceased. In any special case, where the estate is large and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed.[14] The question of greater compensation was involved in *Intestate of Leyson, Rodriguez v. Silva* where the Supreme Court held that the fact

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[9] Sec. 1, Rule 78, reads: "Wills *proved and allowed* in a foreign country, according to the laws of such country, may be allowed, filed and recorded by the proper Court of First Instance in the Philippines."

[10] Sec. 13, Art. VIII, of the Constitution of the Philippines reads in part: "The Supreme Court shall have the power to promulgate rules concerning pleading, practice and procedure in all courts and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. * * *."

[11] Sec. 1, Rule 81, reads: "When there is delay in granting letters testamentary or of administration occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the court may appoint a special administrator to collect and take charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators thereupon appointed."

[12] Sec. 8, Rule 87, reads in part: "If the executor or administrator has a claim against the estate he represents, he shall give notice thereof, in writing, to the court, and the court shall appoint a special administrator who shall in the adjustment of such claim, have the same power and be subject to the same liability as the general administrator or executor in the settlement of other claims. * * *."

[13] G. R. No. L-4783, prom. May 26, 1952.

[14] Sec. 7, Rule 86; See II MORAN, COMMENTS ON THE RULES OF COURT, 4 ed., 420.

that the administrator of an estate is a lawyer or other person especially qualified to deal with intricate and difficult matters of law or business, is, of itself, insufficient ground for increasing the compensation except where the administrator-lawyer was able to stop what appeared to be an improvident disbursement of a substantial amount without having to employ outside legal help at an additional expense of the estate. Citing *Rosentock v. Elser*,[16] it further ruled that the amount of an executor's fee in special cases is a matter largely in the discretion of the probate court, which shall not be disturbed on appeal, except in cases of abuse thereof.

6. *Claims against the estate; effect of moratorium law.* The purpose of the rules of court of requiring all claims for money against the decedent to be filed within the time limited in the notice is to settle the affairs of the estate with dispatch so that the residue may be delivered to the persons entitled thereto without their being afterwards called upon to respond in actions for claims which under the ordinary statute of limitations have not yet prescribed.[17] In the case of *Jison v. Warner Barnes & Co.*[18] the Supreme Court held that the general objective of the Moratorium Law which is the rehabilitation of debtors must give way to more urgent necessity of settling the estate of the decedent and distributing its residue among his heirs as soon as possible, thereby minimizing, if not avoiding altogether, expenses of administration. The Rules of Court expressly enjoin the court to fix the period within which the executor or administrator should finish the settlement of the estate, such period not to exceed one year in the first instance, or more than two years where special circumstances shall so require, or more than two years and a half when the executor or administrator dies and a new one is appointed. Thus the opposition of the administrator against the claim filed by the Warner Barnes on the ground of the application of the Moratorium Law was not held tenable because the effect of the debt moratorium is merely to make a debt, even if already matured, not yet demandable. Sec. 5, Rule 87 covers a claim which is not due, and requires its presentation within the prescribed period, if it is not to be barred. The speedy settlement of the estate of the deceased persons for the benefit of creditors and those entitled to the residue by way of inheritance or legacy after the debts and expenses of administration have been paid is the ruling spirit of our

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[15] G. R. No. L-4090, prom. January 31, 1952.
[16] 48 Phil. 708.
[17] Sec. 5, Rule 87, MORAN, *op. cit.*, 436.
[18] G. R. No. L-4079, prom. Sept. 24, 1952.

probate law.[19] Moreover, the Moratorium Law had not been timely set up because the administrator failed to file an answer within five days from the service of copy of the claim in question.[20]

7. *Heir may not sue until share assigned.* When an executor or administrator is appointed and assumes the trust, no action to recover the title or possession of lands or for damage done to such lands shall be maintained against him by an heir or devisee until there is an order of the court assigning such lands to such heir or devisee or until the time allowed for paying debts has expired.[21] This provision was squarely applied in *Lao v. Dee & Lao* [22] where a former administratrix filed a petition to annul the order of sale of property made by the court in the capacity of an heir while testate proceedings were subsisting. The Court ruled that while the debts are undetermined and unpaid, no residue may be settled for distribution among the heirs and devisees. Consequently, before distribution is made, or before any residue is known, the heirs or devisees have no cause of action against the executor or administrator for recovery of the property left by the deceased. Neither can the petitioner in the case sue as administratrix after she had resigned because she had no legal capacity to sue.

As a corollary, a creditor of an heir cannot intervene either in the proceedings brought in connection with the estate or in the settlement of the succession and therefore cannot collect his claim out of the inheritance of an heir before the net assets of the intestate estate have been determined. This was the ruling of the Court in *Intestate Estate of Agustin Montilla.*[23]

8. *Adjudication of the estate to the heirs does not bar a third person to file a claim against any of the properties adjudicated.* The Supreme Court ruled in *De Guzman v. Salak* [24] that where a third person bought a lot from a deceased spouse and after the death of said spouse said lot was adjudicated to the heirs, "it is error to say that plaintiff should have filed her claim in the intestate proceedings of the deceased spouse if she wanted to protect her interest, for the transaction being binding between the parties, the same can still be

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[19] II MORAN, *op. cit.*, 476; *Magbanua v. Akol*, 40 O. G. 1871, 72 Phil. 567; *Borja v. Borja*, G. R. No. L-1269, prom. April 27, 1949, 46 O. G. 5427.

[20] Sec. 10, Rule 87, reads in part: "Within five days after service of a copy of the claim on the executor or administrator, he shall file his answer admitting or denying the claim specifically and setting forth the substance of the matters which are relied upon to support the admission or denial. * * *."

[21] Sec. 3, Rule 88.

[22] G. R. No. L-3890, prom. Jan. 23, 1952.

[23] G. R. No. L-4170, prom. Jan. 31, 1952.

[24] G. R. No. L-4133, prom. May 13, 1952.

invoked against them or their privies. This means that the plaintiff can still press her claim against the heirs of the deceased. These heirs cannot escape the legal consequences of the transaction because they have inherited the property subject to the liability affecting their common ancestor."

B. Guardianship

1. *Scope.* The Rules of Court provides that the sale or encumbrance of the ward's property may be authorized for specified causes [25] upon verified petition presented by the guardian to the court by which he was appointed. The phrase, "court by which he was appointed," precludes any implication having reference to any person other than a judicial guardian.[26] Consistent with this the Supreme Court has ruled in *De Bautista v. U. S. Veterans Administration* [27] that a mother as a de facto guardian of the person of the minors has no power nor authority to encumber the property of the wards to guaranty the loan she has procured or to bind for the payment of the loan the pensions that the minors may be entitled to receive thereafter. Only a judicial guardian of the ward's property may validly do so, and even then only with the court's prior approval secured accordingly.

2. *Proceedings when person suspected of embezzling or concealing property of ward.* Upon complaint of the guardian of ward, or of any person having an actual or prospective interest in the estate of the ward as creditor, heir or otherwise, that anyone is suspected of having embezzled, concealed or conveyed away any money, goods, or interest, or a written instrument, belonging to the ward or his estate, the court may cite the suspected person to appear for examination touching such money, goods, interest or instrument and make such orders as will secure the estate against such embezzlement, concealment or conveyance.[28] The purpose of this provision is merely to elicit information or secure evidence from the person suspected of having embezzled, concealed or conveyed away any personal prop-

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[25] Sec. 1, Rule 96, reads: "When the income of an estate under guardianship is insufficient to maintain the ward and his family, or to maintain and educate the ward when a minor, or when it appears that it is for the benefit of the ward that his real estate or some part thereof be sold, or mortgaged or otherwise encumbered, and the proceeds thereof put out at interest, or invested in some productive security, or in the improvement or security of other real estate of the ward, the guardian may present a verified petition to the court by which he was appointed setting forth such facts and praying that an order issued authorizing the sale or encumbrance."

[26] II MORAN, *op. cit.*, 512.

[27] G. R. No. L-4155, prom. Dec. 17, 1952.

[28] Sec. 6, Rule 97.

erty of the ward. In such proceeding the court has no authority to determine the right of property or to order delivery thereof. If after examination the court finds sufficient evidence showing ownership on the part of the ward, it is the duty of the guardian to bring proper action.[29] However, the Supreme Court ruled in *Cui v. Piccio*,[30] that the court may issue an order directing the delivery or return of any property embezzled, concealed or conveyed which belongs to the ward, where the right or title of said ward is clear and indisputable, as in one previous case decided by the Supreme Court.[31] When as in this case the title is in question, the right thereto must be determined in a separate ordinary action and not in guardianship proceedings.

II. EVIDENCE

1. *Judicial Notice; Executive Department.* Courts may take judical notice of the "political constitution and history of the Philippines; the official acts of the legislative, executive and judicial departments of the Philippines; * * *".[32] Judicial notice must be taken of the organization of the Executive Department of the Government; its principal officers elected or appointed.[33] This principle was extended by the Supreme Court in *Hernaez v. McGrath* [34] where the court took judicial notice of the fact that Rafael Alunan was a member of the Executive Commission and later Cabinet Minister in the Japanese-sponsored government of the Philippines.

2. *Facts in general.* Courts may take judicial notice of customs concerning business and the usual method of conducting it.[35] Correlative to this in the case of *Manila Railroad v. Court of Industrial Relations* [36] the Supreme Court stated that the dearth of funds rendering it difficult or impossible for the petitioner company to get out of the red in its business was within the judicial notice of said court.

3. *Admission, Self-serving evidence.* In *Monfort v. Aguinaldo* [37] the admissibility of the book of accounts of General Emilio Aguinaldo was questioned. The Supreme Court ruled that while

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[29] II MORAN, *op. cit.*, 521.
[30] G. R. No. L-5131, prom. July 31, 1952.
[31] *Castillo v. Bustamante*, 64 Phil. 839.
[32] Sec. 5, Rule 123.
[33] *Canal Zone v. Mena*, 2 Canal Zone 170, cited in III MORAN, *op. cit.* 22, 27.
[34] G. R. No. L-4044, prom. July 9, 1952.
[35] *U. S. v. Ferger*, 50 Phil. 595; cited in III MORAN, *op.* cit., 38.
[36] G. R. No. L-4329, prom. Aug. 21, 1952.
[37] G. R. No. L-4104, prom. May 2, 1952.

this kind of evidence is self-serving, it may be admitted if proven to have been prepared in the ordinary course of business. The testimony of the respondent Aguinaldo that the book was prepared by him in accordance with his practice of making entries of every payment he makes to satisfy his obligation, and this is borne out by a cursory examination of the appearance of each page as well as the color of the writings appearing therein which testimony has not been disputed, nor the authenticity, correctness and genuineness of said exhibit, led to the admission of the exhibit.

4. *Statute of Frauds; Applicability only to executory contracts.* One of the fundamental principles governing the construction, application and extent of the statute of frauds, is that it is applicable only to executory contracts and not to contracts which are totally or partially performed.[38] If a written instrument evidences a right to repurchase and the same is extended several times orally, the statute of frauds is not applicable to these extensions because the extensions of the period of repurchase and the period of lease are no longer executory but are already performed and consummated. This was the Supreme Court's ruling in *Cocjin v. Libo.*[39]

5. *Sufficiency of "note or memorandum thereof."* In the case of *Berg v. Magdalena Estate*[40] the Supreme Court consistent with a well established doctrine stated that no particular form of language or instrument is necessary to constitute a memorandum or note in writing under the statute of frauds; any document or writing under the contract or for another purpose, which satisfies all the requirements of the statute as to contents and signature is sufficient memorandum or note. A memorandum may be written as well with lead pencil as with pen and ink. It may also be filled in or on a printed form. The note or memorandum required by the statute of frauds need not be contained in a single document, nor, when contained in two or more papers, need each paper be sufficient as to contents and signature to satisfy the statute. Two or more writings properly connected may be considered together, matters missing or uncertain in one may be supplied or rendered certain by another, and their sufficiency will depend on whether, taken together, they meet the requirements of the statute of frauds as to signature.[42]

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[38] III MORAN, *op. cit.*, 180, 182.

[39] G. R. No. L-4250, prom. Aug. 21, 1952.

[40] G. R. No. L-3784, prom. Oct. 17, 1952.

[41] III MORAN, *op. cit.*, 187, 188.

[42] A sufficient memorandum should contain the following: (a) the date and place of making the contract; (b) the name of the parties; (c) the obligation of each of the parties including the subject matter and conditions, such as the delivery and the terms

6. *Agreements in consideration of marriage.* A clear interpretation of the provision of the Rules of Court [43] with regard agreements upon consideration of marriage was made in *Cabague v. Auxilio.*[44] There was an action to recover damages resulting from a refusal to carry out the previously agreed marriage. One of the agreements was between two strangers in consideration of the marriage and the other was between the two lovers as a "mutual promise to marry." The Supreme Court definitely ruled that for the breach of the mutual promise to marry recovery may be had even if orally made but not as to the agreement in consideration of marriage which was unenforceable.

7. *Unaccepted offer.* An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if rejected, equivalent to the actual production and tender of the money, instrument or property.[45] The effect of the tender was elucidated by the Supreme Court in *Araneta Inc. v. Tuazon.*[46] The good faith of the offeror and ability to make good the offer should in simple justice excuse the debtor from paying interest after the offer was rejected. A debtor cannot be considered delinquent who offered checks backed by sufficient deposit or ready to pay cash if the creditor chose that means of payment. Technical defects of the offer cannot be adduced to destroy its effects when the object to accept the payment was based on entirely different grounds.

8. *Persons who cannot testify; infancy.* The Supreme Court in previous cases [47] has declared that the testimony of seven-year old children are admissible provided they possess sufficient intelligence and discernment. This doctrine was reinforced in *People v. Decena* [48] where a seven-year-old child's testimony was admitted despite a discrepancy in his answers in the cross-examination and direct examination. The Supreme Court justified this by saying that one must not expect of a child the same deportment as that of an individual who has complete use of his mental faculties. Besides the interrogation continued until half-past two in the afternoon, an

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of payment; (d) any special requirements or conditions, such as alterations, repairs and notification of any change in address; (e) the signature of the party who answers the obligation or that of some one designated by him. III MORAN, *op. cit.*, 187, citing POMEROY & FISKE, APPLIED BUSINESS LAW, 82, 83.

[43] Sec. 21(c), Rule 123; Art. 1403 (2), par. (c), Civil Code.

[44] G. R. No. L-5028, prom. Nov. 26, 1952.

[45] Sec. 24, Rule 123.

[46] G. R. No. L-2886, prom. Aug. 22, 1952.

[47] *U. S. v. Tan Teng,* 23 Phil. 145; *People v. Dasota,* 52 Phil. 286.

[48] G. R. No. L-3713, prom. Feb. 9, 1952.

hour inconvenient for a child of such age to stand a long cross-examination.

9. *Surviving parties.* An exception to the doctrine that parties, in a case against the administratrix of a deceased person, upon a claim or demand against the estate of such deceased person, cannot testify as to any matter of fact occuring before the death of such deceased person [49] was illustrated in the case of *Wright v. Tinio.*[50] The court stated: "Surely the widow was incompetent to declare about the non-payment of the purchase price, under the Rules of Court. But as the attorney for defendant chose to cross-examine her, the objection is considered waived [51] and her testimony may not be entirely thrown out as incompetent or inadmissible. However, admissibility is not synonymous with "credibility." The testimony was found unconvincing.

10. *Dying declaration.* The statement made by the deceased that he had been shot by the defendant on account of a dispute regarding a truck in *People v. Felipe* [52] was considered a valid *ante mortem* declaration for the reason that Rufino was seriously wounded in the chest affecting his lungs in such a way that the doctor even stopped Encarnacion from further talking with her husband in order not to aggravate his condition.[53]

11. *Writings in general; parol evidence of the execution.* Can parol evidence be admitted to prove execution? This question was squarely answered by the Supreme Court in *Hernaez v. McGrath.*[54] A cursory reading of section 46 [55] and section 51 [56] of the Rules of Court points out that what is sought to be prevented is the introduction of secondary evidence to prove contents when the instrument

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[49] Sec. 26, Rule 123.

[50] G. R. No. L-4004, prom. May 29, 1952.

[51] *Abrenica v. Gonda,* 34 Phil. 739; *Tongco v. Vianzon,* 50 Phil. 698; *McFarlane v. Green,* 54 Phil. 739.

[52] G. R. No. L-4619, prom. Feb. 25, 1952.

[53] In order that a dying declaration may be admissible, four requisites must concur: (a) that the declaration must concern the cause and surrounding circumstances of the defendant's death; (b) that at the time the declaration was made, the declarant was under a consciousness of an impending death; (c) that the declarant is competent as a witness; and (d) that the declaration is offered in a criminal case for homicide, murder or parricide in which the declarant is the victim. III MORAN, *op. cit.,* 311.

[54] G. R. No. L-4044, prom. July 9, 1952.

[55] "There can be no evidence of a writing other than the writing itself, the contents of which is the subject of inquiry except in the following cases: (a) the original has been lost or destroyed * * *."

[56] When the original writing has been lost or destroyed, upon proof of its execution and loss or destruction, its contents may be proved by a copy, or by a recital of its contents in some authentic document, or by the recollection of witnesses.

itself is accessible. Proofs of the execution are not dependent on the existence or non-existence of the document, and, as a matter of fact, such proofs precede proofs of the contents; due execution, besides the loss, has to be shown as foundation for the introduction of secondary evidence of the contents. Evidence of the execution of a document, is in the last analysis, necessarily collateral or primary. It generally consists of parol testimony or extrinsic papers. Even when the document is actually produced, its authenticity is not necessarily if at all, determined from its face or recital of its contents but by parol evidence. At the most, failure to produce the document, when available, to establish its execution may affect the weight of the evidence presented but not the admissibility of such evidence.

12. *Best Evidence Rlue.* In the case of *Monfort v. Aguinaldo* [57] the Supreme Court ruled that although the best evidence for proving payment is by the evidence of receipts showing the same, they are not exclusive. Other evidences may be presented in lieu thereof if they are not available as in the case of loss, destruction or disappearance. The fact of payment may be established not only by documentary evidence but also by parol evidence specially in civil cases where preponderance of evidence is the rule.

13. *Secondary evidence when original is lost or destroyed.* Before secondary evidence may be given of the contents of a document, it must be shown: (1) that the original document was duly executed and delivered, where delivery is necessary; and (b) that it has been lost or destroyed or is in the possession of the adverse party who has failed to produce it after reasonable notice.[58] To prove the unavailability of a copy of a pardon given by the Governor-General in 1934, the respondent elected mayor of Dumangas, Iloilo introduced the testimony of the Executive Officer and Secretary of the Board of Pardon and Parole; the deposition of the Chief of the Records Division of the Office of the President; the deposition of the Identification Clerk and Custodian of the Records, Bureau of Prisons; certificate and testimony of the Clerk of the Court of Iloilo; and the certificate by the Director of Civil Service. The Supreme Court ruled in *Pendon v. Diasnes* [59] that all these proofs were admissible in evidence and competent and constitute sufficient foundation for the introduction of secondary evidence of the nature and contents of the pardon.

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[57] G. R. No. L-4104, prom. May 2, 1952.

[58] Secs. 51 and 52, Rule 123; *Michael & Co. v. Enriquez*, 33 Phil. 87; III MORAN, *op. cit.*, 461.

[59] G. R. No. L-5606, prom. Aug. 28, 1952.

14. *Disputable presumptions; Presumption of regularity of judicial acts.* In *Flordeliza v. Flordeliza* [60] the Supreme Court confirmed the judgment rendered by a judge not only because of the presumption of the regularity of judicial acts [61] but also because of an administrative order by the Department of Justice authorizing him to render judgment in cases previously heard before and submitted to him while presiding over a particular province and his certification that he signed and promulgated the controversial decision.

15. *Evidence necessary in treason cases; two-witness rule.* In this jurisdiction, the law is explicit: there must be "two witnesses to the same overt act." [62] In three cases, the Supreme Court held that the two-witness rule was satisfied. If two women testified that they were eye-witnesses to the massacre of several persons by the accused inside a Citrus Station, the fact that another testified that it was in front of the station does not detract from its fulfillment of the two-witness rule because the victims might have been sacrificed both inside and in front of the Station. This was the ruling in *People v. Buqtro.*[63] In *People v. Cataluña* [64] a defendant was accused of thirteen counts of treason. Numerous witnesses were presented by the prosecution proving particular overt acts. The court ruled that the two-witness rule was satisfied despite the denial of the charges by the defendant who failed to prove the motive why the witnesses should testify falsely against him. And although, there might be no complete corroboration between the prosecution witnesses on all points testified to by them, according to the ruling in *People v. Golez* [65] as long as their testimonies agree on the overt acts of treason committed by the accused, it is sufficient compliance with the two-witness rule. However, in *People v. Taborada* [66] where there was a total discrepancy in the testimonies of three witnesses as to the torture inflicted on the deceased; one testifying that the torture was made in the chapel; the other in his home; and still another in the mountain; the Supreme Court ruled that the two-witness rule was not satisfied.

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[60] G. R. No. L-4987, prom. June 30, 1952.

[61] Sec. 69(n), Rule 123, reads: It is presumed that, "a court or judge acting as such, whether in the Philippines or elsewhere, was acting in the lawful exercise of his jurisdiction.

[62] III MORAN, *op. cit.*, 620, citing *People v. Agpangan,* 45 O. G. 1706.

[63] G. R. No. L-4260, prom. Jan. 21, 1952.

[64] G. R. No. L-4071, prom. March 12, 1952.

[65] G. R. No. L-4618, prom. March 28, 1952.

[66] G. R. No. L-4230, prom. May 31, 1952.

16. *Sufficiency of Circumstantial Evidence; Motive.* The Supreme Court ruled in *People v. Minda* [67] that the failure on the part of the prosecution to establish the motive of the crime is of no moment. This is not essential if the killing has been proven and the identity of the killer is not at issue.[68]

III. Legal and Judicial Ethics

1. *Disqualification of Judicial Officers; Effect of Canons of judicial ethics.*

The petitioner in *Talisay-Silay Milling Co. v. Teodoro,*[69] sought to disqualify the respondent judge in a case wherein petitioner was defendant on the ground that the judge was and is engaged and paid as a professor of law in the Occidental Negros Institute which is owned and controlled by the plaintiffs in said case. In support of the petitioner the petitioner calls attention to the Canons of Judicial Ethics promulgated by the Secretary of Justice which among other things provide that a "judge's official conduct should be free from appearance of impropriety. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relationship warp or bias his judgment or prevent his impartial attitude of mind in the administration of his judicial duties." Adhering strictly to the Rules of Court which provide specifically for the grounds of disqualification of judicial officers [70] the Supreme Court opined that while the Canons of Judicial Ethics are desirable and salutary they do not constitute legal grounds for disqualification. They are addressed to the personal tastes of the judges with a view to formulating certain standards of judicial decorum. But they cannot be intended to provide grounds for disqualification of judicial officers in addition to those enumerated in the Rules of Court. The Supreme Court has enunciated this doctrine, invariably in a long series of cases.[71]

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[67] G. R. No. L-4214, prom. March 27, 1952.

[68] Sec. 98, Rule 123, see *People v. Delgado,* G. R. No. L-302, prom. Aug. 7, 1946; *People v. Buyco,* G. R. No. L-639, prom. Jan. 28, 1948.

[69] G. R. No. L-4579, prom. March 31, 1952.

[70] No judge or judicial officer shall sit in any case in which he, or his wife or child is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, computed according to the rules of civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all the parties in interest, signed by them and entered upon the record. Sec. 1, Rule 126.

[71] See *Jurado v. Hongkong Bank,* 1 Phil. 395, *et seq.,* cited in III Moran, *op. cit.,* 658.

2. *Authority of attorneys to bind clients.* The Rules of Court provide that attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot without special authority compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash.[72] This rule, notwithstanding, laches may operate to validate an agreement invalid at its inception, as when the client on becoming aware of the compromise fails to repudiate promptly the action of his attorney. In such case, it has been held, ratification of the compromise will be presumed with the burden placed on the client to rebut the presumption. The case of *Salazar v. Jarabe* [73] comes within the purview of the exception to the general rule. The failure of the plaintiffs in the case to disavow the compromise entered into by their attorney without authority raised the presumption that they acquiesced in their attorney's action. What is more, this presumption, which they made no attempt to overcome, attains the stature of moral certainty in light of their position of not making attempts to find out the outcome of the case for two years although living in the same municipality where the justice of the peace court exercised its functions.

3. *Removal or suspension of attorney.* A member of the bar may be removed or suspended from his office as attorney by the Supreme Court by reason of his conviction of a crime involving moral turpitude.[74] In the recent case of *Natan v. Attorney Capule,*[74a] the Supreme Court suspended the respondent attorney for infidelity and disloyalty to his former client, the complainant herein, in that in promoting the interest of his new client against the complainant he utilized the papers, knowledge, and information which he had received in the course of his employment as lawyer for complainant. His previous relationship with the complainant disqualified him to accept the case of his new client who had adverse interest against the former. His suspension was also based upon his violation of his oath as a lawyer in willingly promoting a groundless charge of estafa against his former client when he knew fully well that under the circumstances there was no reasonable ground for such prosecution.

Later the Supreme Court decided in *Re Rovero* [75] that an attorney convicted of smuggling should be disbarred. Moral turpi-

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[72] Sec. 21, Rule 127.
[73] G. R. No. L-4659, prom. July 11, 1952.
[74] Sec. 25, Rule 127.
[74a] Administrative Case No. 76, July 23, 1952.
[75] Administrative Case No. 126, prom. Oct. 24, 1952.

tude includes any act done contrary to justice, honesty, modesty or good morals. Definitely, smuggling at least involves an act done contrary to honesty or good morals. The ground invoked by the Solicitor General was aggravated by the fact that the respondent sought to defraud not merely a private person but the government.

4. *Attorney's liens.* An attorney has both a general and charging lien over his client's properties [76] until his lawful fees and disbursements shall have been paid. In *Harden v. Harden* [77] the Supreme Court decided that when it does not have the proper facilities for receiving evidence in order to determine the amount of the fees claimed it is advisable that the matter be determined by the Court of First Instance.

Resumé.

As far as the decisions of the Supreme Court for the past year on the particular subjects aforementioned are concerned, there has been more adherence to established rules than radical departures in the modes of procedure. It may well be said that a great portion of the Court's efforts has been directed towards interpreting and elucidating rules and doctrines which would have been otherwise obscure and isolated. This cursory analysis of a limited portion of the judicial decisions does not necessarily dim the validity of Cardozo's statement with which this work was started. The security of what has been decided, to be a foundation of a laudable and enduring legal system, has yet to pass the laboratory of the years and changing circumstances.

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[76] Sec. 33, Rule 127, See III MORAN, *op. cit.*, 712.
[77] G. R. No. L-3687, prom. July 22, 1952.