SURVEY OF 1955 CASES IN EVIDENCE

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This survey will show that last year's decisional rules in the law of evidence were found mostly in criminal cases. In the forty-two cases herein noted, apparent also is the fact that the Supreme Court generally adhered to settled doctrines.

A. ADMISSIBILITY OF EVIDENCE; MULTIPLE AND CONDITIONAL ADMISSIBILITY; FAILURE TO OBJECT TO INADMISSIBLE EVIDENCE AMOUNTS TO A WAIVER.

The rule is that evidence is admissible when it is relevant to the issue and is not excluded by any provision of Rule 123 of the Rules of Court.[1] Objection to the admissibility of evidence which merely refers to the weight of the evidence should be overruled for facts which have distinct probative value are not to be rejected merely because they are not in themselves convincing.[2]

However, it sometimes happens that an evidence is admissible for two or more purposes under different rules of law. This is a case of multiple admissibility.[3] In contrast to this rule, there is the so-called conditional admissibility in which a particular fact is admitted only in dependence upon other facts on the assurance of counsel that the other specific facts will be duly presented at a suitable opportunity before the close of the case.[4] The reason for this is to preserve the continuity of reception of evidence and to avoid the unnecessary interruption of the proceedings.

Under the rule of multiple admissibility, the Court in the case of *People v. Ananias* [5] admitted a particular statement of the deceased as an *ante-mortem* declaration, although the prosecution offered it as part of the *res gestae* and the trial court accepted it in this concept. The relevant question was, considering that the evidence was offered for a particular purpose and was admitted as such, whether the Court was precluded from considering the evidence for

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[1] Rule 123, § 3.

[2] People v. Abellera, 47 Phil. 731 (1925).

[3] 18: "The rule of multiple admissibility is that when a fact is offered for one purpose and is admissible in so far as it satisfies all rules applicable when offered for that purpose, its failure to satisfy some other rule which would be applicable to it if offered for another purpose does not exclude it." WIGMORE, CODE OF EVIDENCE 18.

[4] I WIGMORE, EVIDENCE 303.

[5] G.R. No. L-5591, March 28, 1955.

another purpose? The Court answered the question in the negative stating:

> "It frequently happens that a piece of evidence is plainly relevant and competent for two or more purposes under different rules of law. When this occurs, there is the so-called 'multiple admissibility' and the rule is that the evidence will be received if it satisfies all the requirements provided by law in order that it may be admissible for the purpose for which it is presented even if it does not satisfy the other requisites for its admissibbility for other purposes. A declaration of a deceased may be received as an admission, as a declaration against interest, as an entry in the course of business, as a dying declaration or as part of *res gestae*. If it be offered for one of these purposes the requirements of the law to that effect should be satisfied, it not being necessary that the requisites for the other purposes be present." [6]

Therefore, the Court admitted the statement as a dying declaration as well as part of the *res gestae*, since it satisfied the requirements for both.

The case of *People v. Yatco, et al.*[7] involved the rule of conditional admissibility. In this case the prosecution offered as evidence an extrajudicial confession of one of the defendants to prove conspiracy. The counsel of the other defendant interposed a general objection to such an evidence alleging that it was hearsay and therefore incompetent as against the other defendant. The lower court ordered the exclusion not on the ground upon which the objection was based but on the ground that the prosecution could not be allowed to introduce the confessions to prove conspiracy without prior proof of such conspiracy by a number of definite acts, conditions and circumstances. In rejecting the ruling of the trial court, the Supreme Court declared that ". . . the lower court should have allowed the confessions to be given in evidence at least against the parties who made them and admit the same conditionally to establish conspiracy in order to give the prosecution all the chance to get into the records of all the relevant evidence at its disposal to prove the charges. At any rate, in the final determination of the case, the trial court should be able to distinguish the admissible and reject what, under the rules of evidence, should be excluded." Once more the court called attention to the policy embodied in a previous decision [8] to the effect that trivial objections to the admission of proof should be received with the least favor.

Besides, it was error for the lower court to disregard the evidence *moto propio* by excluding the evidence not on the basis of the

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[6] The Court cited III MORAN, COMMENTS ON THE RULES OF COURT 8-9 (1952).
[7] G.R. No. L-9181, Nov. 28, 1955; 51 O.G. 6187 (1955).
[8] Prats & Co. v. Phoenix Insurance Co., 52 Phil. 807 (1929).

objection but on a different ground. The lower court "overlooked the fact that the right to object is a privilege which the parties may waive; and if the ground for objection is known and not seasonably made the objection is deemed waived and the court has no power on its own motion to disregard the evidence."

B. RELEVANCY OF EVIDENCE.

Evidence is relevant when it has a tendency in reason to establish the probability or improbability of a fact in issue.[9] It is required that evidence must correspond with the substance of the issue and therefore collateral matters shall not be allowed, except when they tend in any reasonable degree to establish the probability or improbability of a fact in issue.[10]

Admittedly, as no precise and universal test of relevancy is furnished by the law, the determination of whether a particular evidence is relevant or not rests largely in the discretion of the court, which must be exercised according to logic and experience.[11]

The question of relevancy of evidence came up in the trial in the case of *People v. de la Peña, et al.*,[12] wherein the defendants were charged with illegal procurement of search warrant. In establishing the motive of the defendants in procuring said warrant, the prosecution introduced evidence of acts of the defendants preceding, contemporaneous with, and posterior to the issuance of the process. Objection was made to the materiality of evidence relating to acts subsequent to the issuance of the process, which objection was sustained by the trial court, thereby preventing the prosecution from introducing such kind of evidence. The Supreme Court disagreed with the lower court, stating thus:

> "It is clear to our mind that said attempt to extract money, even if effected after the issuance of the search warrant, but prior to the release of the complainant, is relevant to the question whether or not said process was illegally procured, owing to the obvious tendency of the aforementioned circumstances, if proven, to establish that the accused were prompted by the desire to get money from said complainant . . . It is likewise apparent that the evidence of the intent of the parties who obtained said warrant or warrants is not only relevant but very material where the accused are charged with having 'wilfully, unlawfully and feloniously procured' said process, 'pursuant to a common *intent*' . . ."

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[9] I ELIOT, EVIDENCE 197.
[10] Rule 123, § 4, Rules of Court.
[11] Alfred Atmore Pope Foundation v. New York, 138 A 444; 106 Conn. 423.
[12] G.R. No. L-8474, Sept. 30, 1955; 51 O.G. 5195 (1955).

C. DEMEANOR AND CREDIBILITY OF WITNESSES.

The demeanor of the witnesses on the stand is one of the elements to be considered in determining the weight of his testimony.[13] The emphasis, gestures, and inflection of his voice are potent aids in ascertaining his credibility.[14] Since the rules for determining the weight of evidence in criminal cases are likewise applicable in civil cases [15] the rules provide that in determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest and also their personal credibility so far as the same may legitimately appear upon the trial.[16] Consequently, when the testimonies or assertions of witnesses are inherently improbable,[17] inconsistent with human experience,[18] or against the natural course of things,[19] they will not be credited either by the trial judge who saw the witnesses testify or by the appellate court when the case is elevated for review.

In *People v. Fundador*,[20] the trial court rejected the testimonies of the witnesses for the defense because they were unnatural, and their statements were beset with inconsistencies, improbabilities and contradictions. The rejection was sustained by the Supreme Court. But in *People v. Gamlot*,[21] the Court accepted the testimonies of the witnesses of the prosecution in spite of minor inconsistencies pointed out by the defense, declaring that they were:

> "More apparent than real and may admit explanations harmonizing the whole story. The nature and form of questions, the emphasis given to certain words or ideas might have prompted the witness to respond in terms inaccurate because incomplete, even erroneous because of mistaken assumptions. But the judges know how to make allowances for variations in the declarations of a witness and what with their advantage of having observed his gestures, his features, demeanor and manner of testifying, their conclusions are not usually disturbed unless substantial reasons warrant a different course of action."

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[13] United States v. Claro, 32 Phil. 413 (1915).
[14] United States v. Macuti, 26 Phil. 170 (1913).
[15] United States v. Claro, *supra* note 13.
[16] Rule 123, § 94, Rules of Court.
[17] United States v. Sta. Cruz, 1 Phil. 726 (1902); United States v. Sison, 18 Phil. 557 (1911); Arroyo v. Hospital, 46 O.G. Supp. No. 1, 115 (1949); People v. Diño, 46 Phil. 295 (1922).
[18] United States v. Sison, *supra* note 17.
[19] People v. Diño, *supra* note 17.
[20] G.R. No. L-6689, May 21, 1955.
[21] G.R. No. L-6909, May 26, 1955.

Likewise, the court in approving the testimonies of the prosecution witnesses in the case of *People v. Lamban,*[22] announced that they were very "clear, natural, and probable," in contrast to those of the witnesses for the defense which "showed consciousness of guilt." In the case of *People v. Notarte,*[23] the credibility of the testimony of one Rubion was assailed on the ground that he could not have possibly recognized the appellant since the night was dark. But the Court noted that the witness knew the appellant since boyhood and since he had focused his flashlight against the accused at a distance of only four meters, the identification was credible especially when there was no motive on the part of the witness of implicating the appellant with such a serious crime as murder. To the same effect, the Court gave finality to the conclusion made by the trial judge on the credibility of the prosecution witnesses in the case of *People v. Masdal Hairal, et al.*[24] inasmuch as, the Court said, the trial judge was in a better position to observe their demeanor on the witness stand and in appreciating their testimonies. The case of *People v. Mamadra* [25] was even more emphatic when the Court admitted the testimonies of the three witnesses for the prosecution on the ground that they were placed "in a situation that makes it difficult for them to forget the appellant," [26] in the absence of an improper motive to impute the heinous crime to the defendant.

It is true that not all persons who witnessed an incident are impressed in the same manner and that in relating their impressions, they may disagree on the minor details [27] and that it is enough that the principal points be covered and established by their testimonies [28] to be worthy of belief. When, however, the testimonies of the witnesses for the prosecution are replete with substantial contradictions which make their testimonies unreliable, they will not be credited and the accused shall be acquitted. This was the ruling in *People v. Soriano, et al.* [29]

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[22] G.R. No. L-5931, Feb. 25, 1955.
[23] G.R. No. L-6371, Sept. 28, 1955; 51 O.G. 5157 (1955).
[24] G.R. No. L-7010, May 31, 1955.
[25] G.R. No. L-6580, May 20, 1955.
[26] The three witnesses, Esteban, his wife and Baquero were taken by the defendants and his companions from the former's house after the defendant and his companions had robbed it, to the house of Ricardo where the shooting took place. With respect to Tomas, another brother, he also identified the defendant as he had previously met the defendant and on the fatal day he came upon him and his companion as they were leaving the scene of the crime.
[27] People v. Limbo and Limbo, 49 Phil. 94 (1926).
[28] People v. Jureidini, 76 Phil. 219 (1946).
[29] G.R. No. L-6244, Aug. 30, 1955; 51 O.G. 4513 (1955).

The question may however be asked: How credible is a recanting witness? This question was squarely raised in the case of *People v. Ubiña, et al.*,[30] where it appeared that one Francisco first testified for the prosecution and later on testified for the defense; that while testifying for the latter he repudiated his former testimony for the prosecution, declaring that all he had stated against the defendants was not true because he had been paid and intimidated in making the incriminatory statements. As to the credibility of Francisco, the Court said:

> "Merely because a witness says that what he had declared is false and that what he now says is true is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credibility. If the previous confession of an accused were to be rejected simply because the latter subsequently makes another confession, all that an accused would do to acquit himself would be to make another confession out of harmony with the previous one. Similarly, it would be dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such a rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses . . ."

The correct rule in dealing with those kinds of testimony was laid down by the Court in this manner:

> "The rule should be that a testimony solemnly given in court should not lightly be set aside and that before this can be done, both the previous testimony and the subsequent one be carefully scrutinized. All the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth."

D. JUDICIAL NOTICE; PROOF OF FOREIGN LAWS.

Judicial notice or knowledge may be defined as the cognizance that courts may take without proof of facts which they are bound or supposed to know.[31] It means no more than that the court will bring to its aid and consider, without proof of the facts, its knowledge of those matters of public concern which are known by all well-informed persons.[32] The maxim is that "what is known need not be proved."

It should be noted that the principle of judicial notice is not static; it is progressive in the sense that throughout the years this principle of judicial notice has constantly expanded to govern many facts which come to public notice and knowledge due to the advance

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[30] G.R. No. L-6969, Aug. 31, 1955.
[31] III MORAN, COMMENTS ON THE RULES OF COURT 20 (1952).
[32] State v. Kelly, 81 P. 450 (1905).

of civilization. However, the parties are not precluded from introducing evidence upon any of the subjects supposed to be covered by the principle of judicial notice.[33]

Judicial notice covers three general matters, such as those which are of public knowledge, those of unquestionable demonstration, and those which ought to be known by the judges because of their judicial functions.[34] The fact that daily experience tends to expand the coverage of judicial notice is exemplified by the case of *People v. Gallano* [35] wherein the Court took judicial notice of the fact that the moon was clear and bright at the precise time involved.

The settled rule in the Philippines is that foreign laws are not judicially recognized and proof is necessary in order that the court will take cognizance of them.[36] This doctrine was reiterated in *Karam Singh v. Republic* [37] wherein the petition for naturalization was denied because the petitioner failed to prove that the laws of India grants the same right to Filipinos. The Court declared:

> "The second objection is based on the rule that a foreign law must be proved . . . One of the disqualifications of an applicant for naturalization is that his country does not grant Filipinos the right to become naturalized citizens or subject thereof . . .[38] A petitioner, therefore, must establish by proof that he has none of the disqualifications specified in the Act. This the petitioner-appellee failed to do because he has not proven that the laws of the country of which he is a citizen permit Filipinos to be naturalized therein as citizens." [39]

E. DOCUMENTARY EVIDENCE.

"Documentary evidence" is that which is supplied by written instruments, or derived from conventional symbols, such as letters,

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[33] BENGZON, LECTURES IN REMEDIAL LAW 535 (1951).

[34] Rule 123, § 5, Rules of Court.

[35] G.R. No. L-6642, Nov. 18, 1955.

[36] *In re* Estate of Johnson, 39 Phil. 156 (1918); Adong v. Cheong Seng Gee, 43 Phil. 43 (1922); Fluemer v. Hix, 54 Phil. 613 (1930); Sy Joc Lieng v. Encarnacion, 16 Phil. 137 (1910); International Harvester v. Hamburg-American Line, 42 Phil. 845 (1922); Philippine Manufacturing Co. v. Union Insurance Society of Canton, 42 Phil. 378 (1922). In a number of cases, however, it is said that when a foreign law is pleaded and there is no evidence on such laws, the presumption is that they are the same as those of the Philippines on the particular spbject. Yam Ka Kim v. Collector, 30 Phil. 46 (1915); Lim v. Collector, 36 Phil. 472 (1917); Miciano v. Brimo, 50 Phil. 867 (1925); Beam v. Yatco, 46 O.G. 5172 (1950).

[37] G.R. No. L-7567, Sept. 29, 1955; O.G. 5172 (1955).

[38] § 4(h), Com. Act No. 473.

[39] It is submitted that the presumption that foreign laws are, in the absence of proof, the same as those of the Philippines (*supra* note 6), cannot be relied upon in naturalization cases because the reciprocity clause in the Naturalization Law is in the nature of a qualification and proof thereof is absolutely necessary. *See* Yap Chin v. Republic, G.R. No. L-4177, May 29, 1953.

by which ideas are represented on material substances; documents produced for the inspection of the court or judge, the word "judge" including all persons authorized to take evidence, either by law or by the consent of the parties. It includes books, papers, accounts and the like.[40] Documentary evidence is classified into public and private documents. The classification and distinction of these two kinds of documentary evidence are necessary in view of the difference in the manner of proving their contents. In this jurisdiction, there can be no evidence of a writing other than the writing itself, the contents of which being the subject of inquiry.[41] It is required that the original,[42] as a general rule,[43] should be presented; and in the case of a private document, before it can be received as evidence, its due execution and authenticity must be proved.[44]

In the case of *People v. Mamadra*,[45] a private writing was involved. The defendant presented the original copy of the 'Narrative Report' which was supposed to contain the activities of the Chief of Police. By this report, the defendant sought to establish that he was undergoing a training to qualify as a policeman when the crime was committed in another place. However, the writing was not identified and so the lower court noticing that it was of dubious admissibility excluded it. On appeal, the Supreme Court agreed with the exclusion of the writing because "the person certifying it was not presented as witness and the defense failed to give a satisfactory explanation why that report was submitted by Dipatuan directly to the provincial governor without coursing it thru his immediate chief, the mayor of Malabang. As the lower court observed, this report has the earmarks of a fabricated evidence."

An official record or any entry therein when admissible for any purpose may be evidenced by an official publication thereof or by a

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[40] 22 C.J. 791.

[41] Rule 123, § 46, Rules of Court.

[42] "Original" does not necessarily mean the first paper written. III MORAN, COMMENTS ON THE RULES OF COURT 448 (3rd. ed.).

When a number of documents are all made by printing, lithography or any other process of such a nature as in itself to secure uniformity in the copies, each copy is primary evidence of the contents of the rest; but when they are all copies of a common original, no one of them is primary evidence of the contents of the original. REYNOLDS, EVIDENCE § 61; STEPHEN, EVIDENCE, Arts. 64, 65, 71; 1 WHARTON, EVIDENCE § 92. See also Rule 123, § 47, Rules of Court.

[43] Rule 123, § 46 of the Rules of Court enumerates the exceptions.

[44] Rule 123, § 48. However, where a private writing is more than thirty years old is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its execution and authenticity need be given. Rule 123, § 49, Rules of Court.

[45] G.R. No. L-6580, Aug. 20, 1955.

copy attested by the officer having the legal custody of the record or by his deputy and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.[46] It must be the certified copy of the original document that must be presented and such certified copy, to be admissible as evidence of the contents, must be a certified literal copy thereof.[47]

The evidence in question in the case of *Marie Howard v. Padilla*,[48] concerns a photostatic copy of a certification by the priest who allegedly performed the marriage. The question was whether this was sufficient to establish the marriage between Marie Howard and her alleged deceased husband. The Supreme Court rejected such kind of evidence to establish the alleged marriage because it was a mere photostatic copy of a certification by the priest who had performed the marriage which was inadmissible unless a showing was made that the proper certificate could not be produced or was not available. Furthermore, it was not the certified copy of a marriage certificate which was offered in evidence by the counsel.

F. "FALSUS IN UNO FALSUS IN OMNIBUS."

This rule is merely a guide in the appreciation of evidence. The general rule is that a sworn witness wilfully falsifying the truth in one particular ought never to be believed on the strength of his testimony, whatever he may assert.[49] In other words, once a person knowingly and deliberately states a falsehood in one material aspect, he must have done so as to the rest[50] because the presumption is that a witness who has wilfully given false testimony in one detail, has also testified falsely in other respects.[51] But the rule of *falsus in uno falsus in omnibus* is only a permissible rule of evidence which allows the court to draw or not to draw the inference as circumstances may warrant. The requisites to be fulfilled in the application of this rule are that: (1) there is no sufficient corroboration by other circumstances or other unimpeached evidence; (2) the mistakes are on the very material points; (3) the witness deliberately or intentionally falsified the truth.[52]

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[46] Rule 123, § 41, Rules of Court.

[47] Government v. Martinez, 44 Phil. 817 (1923); Reyes v. Rodriguez, 62 Phil. 771 (1935); United States v. Hernandez, 31 Phil. 342 (1915); United States v. Raymundo, 33 Phil. 367 (1915).

[48] G.R. No. L-7064, April 22, 1955.

[49] United States v. Osgood, 27 Fed. Cas. No. 15971-a, 364.

[50] People v. Dasig, 49 O.G. 3338 (1953).

[51] Gonzales v. Mauricio, 53 Phil. 728 (1929); Neyra v. Neyra, 76 Phil. 333 (1946).

[52] United States v. Santiago, 29 Phil. 374 (1914); United States v. Pala, 19 Phil. 190 (1911); Lyric Film Exchange Inc. v. Cowper, 36 O.G. 1642 (1937); People v. Dasig, *supra* note 50.

In the case of *People v. Jarra*,[53] a third person testified for the prosecution that the day previous to the killing, trouble arose between the defendant's daughter and the deceased and such trouble continued the following day when the defendant challenged the deceased but was only prevented from assaulting the deceased because of the intervention of third persons. The defense, in contradicting this testimony, presented the divorce certificate signed by the deceased showing that the daughter could not have been in the house of the deceased the day before the killing because she had already been divorced and separated from the deceased for a month before the killing, as the certificate showed. So the Court declared that inasmuch as "the witness for the prosecution who swore to the supposed trouble, cause or motive of the killing told a lie, his testimony on the supposed threat made by the appellant at noon of the day of the incident which is not corroborated must also be rejected under the principle of *falsus in uno falsus in omnibus*."

G. PRESUMPTIONS.

1. Conclusive Presumptions.

Conclusive or absolute presumptions of law are those which are not permitted to be overcome by any proof to the contrary, however strong.[54] One of the conclusive presumptions provided by the Rules of Court [55] is the judgment or order of a court when declared by the Rules to be conclusive.[56] It should be noted that the conclusiveness of judgment is not the same as *res judicata* or the principle of bar by former judgment.[57]

This principle was again applied by the Court in the case of *De la Rosa v. Director of Lands, et al.*[58] where it was made to appear that the lot for which the application for registration was made by the plaintiff had already been declared part of the public domain in a previous registration proceeding and opposed by the same oppositors. In dismissing the application of the plaintiff, the Court said that since this matter had already been adjudged in the former judg-

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[53] G.R. No. L-7168, June 19, 1955.

[54] Mercado v. Santos, 66 Phil. 215 (1938).

[55] Rule 123, § 68, Rules of Court provides: "The following are instances of conclusive presumptions: (d) the judgment or order of a court, when declared by these rules to be conclusive. . . ."

[56] The pertinent provisions of the Rules of Court concerning the conclusiveness of the order or judgment of the court, both domestic and foreign is Rule 39, §§ 44(a) and (b), and 48(a) and (b). See also Rule 39, §§ 44 and 45.

[57] For a discussion of the differences of these principles, see BENGZON, LECTURES IN REMEDIAL LAW 209 (1951).

[58] G.R. No. L-6311, Feb. 28, 1955.

ment and accordingly, as far as the same was concerned, there was therefore conclusiveness of the former judgment. With a similar vein, the Court in the case of *Marie Howard v. Padilla*[59] held that the status of Marie Howard as the legal widow of one William Howard, having been already determined in two previous special proceedings, was already conclusively determined.

However, a judgment may be set aside and annulled under specific conditions.[60] The cases of *Miranda v. Tiangco, et al.*[61] and *Escudero v. Flores, et al.*[62] are in point. In the *Miranda* case, aside from the pronouncement of the Court that the former judgment was conclusive upon the parties, it was said that said judgment could only be impeached on grounds provided for in section 45, Rule 123 of the Rules of Court, otherwise it could not be annulled or attacked.

In the *Escudero* case, the meaning of "fraud" which is sufficient to nullify a judgment was explained. It was established that there was a previous judgment declaring the Floreses to be the owners of the land in question. The Escuderos, however, alleging that the Floreses committed fraud,[63] sought to nullify the judgment. What kind of fraud nullifies a judgment, the Court declared:

> "Anyway the deception by the Floreses, if any, was intrinsic being the same category as presentation of perjured testimony or false evidence. Such fraud does not prevent the application of res judicata. Only extrinsic fraud in procuring a judgment is a ground to nullify it.[64]

2. Disputable Presumptions.

A disputable presumption is that which suffices until overcome by contrary evidence.[65] For the past year the Supreme Court had occasion to pass upon the application of some of the disputable presumptions as provided for in section 69 of Rule 123 of the Rules of Court.[66]

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[59] G.R. No. L-7064, April 22, 1955.

[60] Rule 123, § 45, Rules of Court provides: "Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, or collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings." See Anuran v. Aquino and Ortiz, 38 Phil. 29 (1918).

[61] G.R. No. L-7044, Jan. 31, 1955; 51 O.G. 1366 (1955).

[62] G.R. No. L-7401, June 25, 1955; 51 O.G. 3444 (1955).

[63] The fraud allegedly committed falls under Art. 1339 of the Civil Code which states: "Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud."

[64] Citing Almeida v. Cruz, 47 O.G. 1179 (1951); Domingo v. David, 68 Phil. 134 (1939).

[65] Rule 123, § 69, Rules of Court.

[66] The disputable presumptions involved are the following:

Consonant with general experience, it is presumed that a person intends the ordinary consequences of his voluntary act.[67] This presumption was the ground for reversing the lower court in the case of *Hilado v. Assad* [68] where the lower court ruled that the testimony of Jacob Assad that he was buying the property for his uncle and therefore had given the naturalization papers to the vendor was merely a circumvention of the law by Jacob in his desire to buy the property himself. For "the legal presumption is that men act in good faith and intend the consequences of their voluntary acts."

Another disputable presumption passed upon by the Court is that an evidence wilfully suppressed would be adverse if produced.[69] This presumption was invoked by the defense in the cases of *People v. Tutale* [70] and *People v. Velayo* [71] in an attempt to weaken the evidence of the prosecution. But the Court in the *Tulale* case refused to adopt the presumption against the prosecution notwithstanding the fact that the witness who was not presented played an important role in the events which culminated in the killing. There, the non-presentation of the witness was excused. In the same manner, the Court in the *Velayo* case rejected the application of the presumption on the ground that since there was already a sufficient number of creditable witnesses who had testified, there was no need of presenting the other listed witnesses as their testimonies would only be cumulative.

That a person found in possession of a thing taken in the doing of a recent wrongful act is disputably presumed to be the doer of the whole act has been established by the rules of evidence and judicial decisions.[72] The presumption is not however of law but of fact, and in order that it may arise, the possession of the accused must be

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(c) That a person intends the ordinary consequences of his voluntary act;
(e) That evidence wilfully suppressed would be adverse if produced;
(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act;
(m) That official duty has been regularly performed;
(o) That all the matters within an issue in a case were laid down before the court and passed upon by it.
(ee) That the law has been obeyed.

[67] Rule 123, § 69(c), Rules of Court.
[68] G.R. No. L-6397, Aug. 30, 1955; 51 O.G. 4527 (1955).
[69] Rule 123, § 69(e), Rules of Court. See also People v. Balansag, 70 Phil. 266 (1940); Prising v. Springer, 13 Phil. 223 (1909); De Leon v. Juyco, 73 Phil. 588 (1941).
[70] G.R. No. L-7233, May 18, 1955.
[71] G.R. No. L-7257, Feb. 8, 1955.
[72] United States v. Soriano, 9 Phil. 441 (1907); United States v. Soriano, 12 Phil. 512 (1908); United States v. Espia, 16 Phil. 506 (1910).

unexplained and the property must have been recently stolen.[73] This was precisely the situation in which the defendant was caught in the case of *People v. Ganzon*[74] wherein the Court held that the "unexplained possession of the deceased's notebook and money justifies by itself the findings that the slaying was connected with robbery and that the crime committed was that of robbery with homicide."

In the case of *People v. Nazario*[75] the presumption that official duty has been regularly performed[76] was applied. It appeared that the defendant who was deaf and dumb entered with the assistance of his counsel a plea of guilty to a charge of robbery. On appeal the counsel argued that since defendant was deaf and dumb he probably did not know the import of the plea of guilt. The answer to this argument was based on the presumption above-stated, and the Court held that since he was assisted by his counsel and the defendant did not seem to be illiterate, the presumption therefore was that the proceedings were regular and that adequate measures were taken to translate to him by signs the contents of the information and to ascertain his manifestations.

But in the case of *Go Chi Gun, et al. v. Co Cho, et al.*[77] where a former judgment was contested on the ground of fraud, not only was there a presumption that official duty had been regularly performed but also that all matters within an issue in a case had been laid down before the court and had been passed upon by it[78] and that the law was obeyed.[79] The Court requires a high quantum of proof of the fraud to annul a previous judgment because "public policy demands that judicial proceedings should not lightly be considered; it is necessary that full faith and credit should be given thereto in order that matters settled thereby may no longer be subject to doubt or question."

H. OFFER OF COMPROMISE AS IMPLIED ADMISSION OF GUILT.

In criminal cases, which are not allowed by law to be compromised, an offer of compromise by the accused may be received in

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[73] United States v. Catimbang, 35 Phil. 367 (1916). See also People v. Singayen (C.A.), 51 O.G. 2463 (1955).

[74] G.R. No. L-6872, May 21, 1955.

[75] G.R. No. L-7628, Sept. 29, 1955.

[76] See United States v. Escalante, 36 Phil. 743 (1917); People v. Gonzales, 50 Phil. 9 (1925); Raquiza v. Bradford, 75 Phil. 50 (1945); People v. Muñoz, G.R. No. L-3396, April 18, 1951.

[77] G.R. No. L-5208, Feb. 28, 1955.

[78] Rule 123, § 69(o), Rules of Court.

[79] Rule 123, § 69(ee), Rules of Court.

evidence as an implied admission of guilt.[80] The attempt at amicable settlement of the case need not be personally conducted by the accused. Some other persons who act under the authority or knowledge of the accussed may be sufficient to bind him. This happened in the case of *People v. Cuevas* [81] where the lower court found out that the uncle and aunt of the accused together with his mother had made an offer to the offended party to settle the case amicably. Such fact was considered as an implied admission of guilt.

I. EVIDENCE OF SIMILAR ACTS.

Evidence that one did or omitted to do a certain thing at one time is not admissible to prove that he did or omitted to do the same or similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like.[82] It is said that this rule is founded upon reason, justice and judicial convenience. The lone fact that a person has committed the same or similar act at some prior time affords, as a general rule, no logical guaranty that he committed the act in question. If evidence of similar acts are to be invariably admitted, they will give rise to multiplicity of collateral issues and will subject the defendant to surprise.[83] But flight of the accused, although it raises no legal presumption of guilt, has always been admissible in evidence as tending to show that he was the one who committed the crime,[84] and if not explained consistently with the fugitive's innocence, the act of fleeing shows a consciousness of guilt, for the wicked flee where no man pursueth, but the righteous are bold as a lion.[85] Thus, in the case of *People v. Cuevas,*[86] it was shown that after the crime had been committed and the criminal identified, the defendant disappeared and in the meantime an attempt at amicable settlement by his relatives was conducted. After one month of hiding he came out ready to post the corresponding bail bond. This fact, together with other proofs, indicated guilt.

But in the case of *Nicolas v. Enriquez, et al.,*[87] the Court refused to admit the testimony of three prosecution witnesses which

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[80] Rule 123, § 9, Rules of Court. See also People v. Palabao, 51 O.G. 790 (1955); United States v. Maqui, 27 Phil. 97 (1914); People v. Sope and Cruz, 75 Phil. 810 (1946).

[81] G.R. Nos. L-5844-45, May 30, 1955. Also People v. Sope and Cruz, 75 Phil. 810 (1946), where the accused acted through his counsel.

[82] Rule 123, § 17, Rules of Court.

[83] III MORAN, COMMENTS ON THE RULES OF COURT 138 (1952).

[84] United States v. Alegado, 25 Phil. 510 (1913).

[85] United States v. Virrey, 37 Phil. 618 (1917).

[86] G.R. Nos. L-5844-45, May 30, 1955.

[87] G.R. No. L-8371, June 30, 1955.

tended to show that a boy born five years before the marriage of the complainant to one of the defendants was the son of both defendants. The contention of the petitioner was that prior sexual relations between defendants were admissible to show propensity or disposition to maintain such relations which would support the charge of concubinage. In ruling out this contention, the Court invoked Section 17, Rule 123 of the Rules of Court:

> ". . . The rule is not absolute for it is subject to the exceptions enumerated . . . We are not persuaded that the proferred evidence . . . would come under any of the exceptions named . . . The previous sexual relations sought to be proved were far removed in point of time from the illicit act now complained of and having moreover taken place when there was as yet no legal impediment to the same they furnish no rational basis for the inference that they would be continued after complainant's marriage to one of the defendants had created such impediment and made continuance of sexual relations between the defendants a crime."

Similarly, the Court in the case of *Hilado v. Assad* [88] reversed the lower court saying that even if it were true that one Jacob Assad represented himself to the Sheriff that he was Salim Jacob Assad, it could not be inferred that he also represented himself to Justice Hilado as Salim Jacob Assad.

J. CONSPIRACY.

The Act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirators after the conspiracy is shown by evidence other than such act or declaration.[89] In order to be admissible, however, it is necessary that the conspiracy be first proved by evidence other than the admission itself, that the admission relates to the common object and that the declarant was engaged in carrying out the conspiracy.[90] It should be remembered, however, that this rule applies only to the extra-judicial declaration of a conspirator and not to his testimony in the nature of a direct evidence given while in the witness stand,[91] in which case proof of conspiracy is not required before admission of the testimony.[92] In this jurisdiction it has been the settled rule embodied in a long line of decisions that the conspiracy need not be proved directly but the community of design may be inferred from

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[88] G.R. No. L-6397, Aug. 30, 1955; 51 O.G. 4527 (1955);

[89] Rule 123, § 12, Rules of Court.

[90] III MORAN, COMMENTS ON THE RULES OF COURT 90 (1952).

[91] *Id.* at 91. See also People v. Dacanay, G.R. No. L-4838, March 28, 1953; 49 O.G. 919 (1953).

[92] People v. Steelik, 187 Cal. 361, 203 P. 78, 84 (1921); Gardiner v. Magsalin, 73 Phil. 114 (1941).

the peculiar circumstances of the case,[93] and when conspiracy has been established by the evidence, the accused may be regarded as principals irrespective of their actual participation in every detail of the execution of the crime, everyone being considered as guilty as those who had directly participated.[94]

In the case of *People v. Lingad, et al.*,[95] the conspiracy was inferred from the fact that the accused, on the evening when the crime was committed, came to an agreement to perpetrate the hold-up, followed by the act of one of the accused of securing a taxi, the means by which they proceeded to the scene of the crime and after the commission of the crime went away until they were caught and prosecuted. Under these circumstances, the three accused were guilty of the crime of robbery with homicide and it is immaterial which of them shot the deceased, because "conspiracy is conclusively shown by their common concurrence and their coordinate acts."

In the case of *People v. Undali Omar* [96] conspiracy was inferred from the following circumstances. The deceased was ambushed. After the body fell, the defendant and two other companions approached the fallen body while the other four companions stood guard. All were armed. To be sure that the victim was already dead, the two companions of the defendant slashed the victim and defendant fired at him with his carbine. The defendant presented no evidence, relying on the argument that it is not a crime to shoot a corpse.[97] Deducing conspiracy from such facts the Court said:

> "But such shooting is only a circumstance to show that all the four, including the appellant conspired to liquidate the unsuspecting wayfarer. Their simultaneous, joint and concerted acts evinced unity of criminal purpose, conspiracy which made them all responsible for Jamang's death it being immaterial who discharged the fatal bullet."

Conspiracy in the case of *People v. De Luna* [98] was also deduced from the fact that three of the accused entered the house, rained fist blows on the victim and after the latter had fallen unconscious, one of them stabbed him while the others stood guard at the gate. The

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[93] *E.g.*, People v. Magdagay, 46 Phil. 838 (1924); People v. Diokno, 63 Phil. 601 (1936); People v. Ibañez, et al., 44 O.G. 30 (1948); People v. San Luis, G.R. No. L-2365, May 29, 1950; People v. Remalante, G.R. No. L-3513, Sept. 26, 1952.

[94] *E.g.*, People v. Carbonel, 48 Phil. 868 (1925); People v. Cu Unjieng, 61 Phil. 236 (1934); People v. Timbang, et al., 74 Phil. 295 (1942); People v. Bersamin, G.R. No. L- 3097, March 5, 1951; People v. Mendoza, G.R. No. L-4146, March 28, 1952.

[95] G.R. No. L-6989, Nov. 29, 1955.

[96] G.R. No. L-7137, April 30, 1955.

[97] Impossible crime is punishable under Art. 4, par. 2 and Art. 59, Rev. Penal Code.

[98] G.R. No. L-6974, May 18, 1955.

court held that "no direct evidence of agreement or concert is required and that conspiracy is inferrable from the conduct of the appellants themselves" and even though the three appellants took no part in the assault, their conduct of guarding at the gate showed clearly their participation in the criminal design.

There is also conspiracy when the three defendants, after escaping from jail by killing the guard, proceeded to the house of their victim and killed him, the motive being that the deceased charged them with robbery for which they were confined in jail after their inability to post the corresponding bail bond. These were the facts in the case of *People v. Galit, et al.*[99]

Likewise, the Court found that conspiracy existed in the case of *People v. Masdal Hairal, et al.*[100] because according to the evidence one of the defendants killed one of the deceased while the other defendant killed the other deceased, both appearing at the scene of the killing at the same time "armed to the teeth and both used their weapons at almost the same time actuated apparently by the same motive." The Court said that it was obvious from the facts that they were acting in concert as if by agreement and therefore the two defendants were responsible for the killing of each of the deceased.

Undoubtedly, conspiracy may also be inferred from the circumstances that all the accused, fully armed, were at the scene of the crime although only one of them fired the fatal shot. Thus, the Court in the case of *People v. Monadi, et al.*,[101] reiterating the ruling laid down in a previous case,[102] concluded that while there was no direct evidence as to conspiracy among the four appellants, conspiracy was inferrable from their very acts, which clearly indicated a joint purpose and design, concerted action and community of interest.

K. SELF-SERVING EVIDENCE.

Self-serving evidence is the statement of a party intended to serve his own interest. Admissions[103] are receivable against the party who made them but not in his favor because they would be self-serving evidence. The maxim is that one cannot make evidence for himself. The reason for the rule is that what a man says against his own interest may be safely believed; but it is not safe to credit

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[99] G.R. No. L-6758, Sept. 30, 1955; 51 O.G. 5176 (1955).
[100] G.R. No. L-7010, May 31, 1955.
[101] G.R. Nos. L-3770-71, Sept. 27, 1955.
[102] People v. Mahlon, G.R. No. L-5198, April 17, 1955.
[103] Rule 123, §7, Rules of Court provides: "The act, declaration or omission of a party as to a relevant fact may be given in evidence against him."

him where he is advocating his interest.[104] For instance, it has been held that entries in a diary are not admissible in favor of the owner because they are self-serving, but they are admissible against him.[105] Again, where a creditor immediately after executing a notarial document wherein he release a mortgage, swears to an affidavit in secret without the debtor's knowledge declaring that "compelled by the circumstances" during the Japanese occupation, he had accept the payment under protest, such affidavit is self-serving.[106]

In the case of *Marie Howard v. Padilla* [107] the evidence involved was an affidavit which accompanied a photostatic copy of a certification by the priest, stating that a person referred to in the certification as Marie Dobian was the same defendant Marie Howard, widow of William Howard. According to the Court the affidavit was inadmissible because it was self-serving. The case of *Villar v. Paraiso*,[108] involved several documents. In a quo warranto proceeding to contest the eligibility of Paraiso to hold office, Paraiso presented several documents showing that he had already resigned from the ministership of his church and that his resignation had been accepted by the cabinet of his church. But the resignation was not in due form as required by the regulation issued by the Director of Public Libraries and was not accepted by the said Director. The Supreme Court declared that these were self-serving evidence prepared to serve the political interest of the respondent in an attempt to obviate his disqualification under the law.

L. HEARSAY EVIDENCE; EXCEPTIONS.

By "hearsay" is meant that kind of evidence which derives its value not solely from the credit to be attached to the witness himself, but also in part because of the veracity and competency of some other person from whom the witness may have received the information.[109] Courts therefore will not admit the testimony of a witness as to what he has heard other persons say about the facts in dispute because it is hearsay [110] and violate the rule that a witness can testify only to those facts which he knows of his own knowledge; i.e., those which are derived from his own perception, except as other-

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[104] III MORAN, COMMENTS ON THE RULES OF COURT 62-63 (1952), citing Richmond v. Anchuelo, 4 Phil. 596 (1904); Lim Chingco v. Terariray, 5 Phil. 120 (1905); People v. Tolentino, 69 Phil. 715 (1940).

[105] People v. Alvero, 47 O.G. 5619 (1951).

[106] Reyes v. Zaballero, et al., G.R. No. L-3561, May 23, 1951.

[107] G.R. No. L-7064, April 22, 1955.

[108] G.R. No. L-8014, March 14, 1955.

[109] 1 JONES, EVIDENCE § 297, 559.

[110] III MORAN, COMMENTS ON THE RULES OF COURT 298 (1952).

wise provided in this rule.[111] Hearsay evidence is to be rejected without regard to its character, as being oral or written statements or acts, because a writing which is hearsay in nature is not to be admitted in evidence because of its form or the circumstances in which it may have been made.[112]

Nevertheless, hearsay evidence not objected to is admissible [113] and such objection must be made on time [114] because it cannot be objected to for the first time on appeal.[115] This happened in the case of *People v. Cuevas* [116] whereby one Abarquez testified on cross-examination by the defense counsel that according to one Magpantay their assailant was the appellant Cuevas. The Court stated that even though the testimony was hearsay, it was not objected to; furthermore, it was given on cross-examination. Hence the right to object was deemed waived.

There was however several exceptions to the hearsay rule, but for purposes of this survey, only two of them will be dealt with; namely, dying declaration and part of *res gestae*.

1. Dying Declaration.

Dying declaration is that made by a person at the point of death concerning the case and circumstances of the injury from which he thereafter dies.[117] Such declaration, made under consciousness of an impending death, may be received in a criminal case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.[118] The dying declaration may be oral or in writing and when in writing it need not be in the handwriting of the declarant. When the declaration is orally made it may be testified to by the person to whom it is made and when it is reduced to writing it must be proved by the writing itself which must be authenticated and proved as any document offered in evidence[119] In the case of *People v. Cuevas*,[120] the Court considered two

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[111] Rule 123, § 27, Rules of Court.

[112] 1 JONES, EVIDENCE § 298.

[113] Allarde v. Abaya, 57 Phil. 909 (1933); United States v. Choa Tong, 22 Phil. 562 (1912).

[114] People v. Florendo, et al., 48 O.G. 1799 (1952).

[115] United States v. On Shui, 28 Phil. 242 (1914); Marella v. Reyes, 12 Phil. 1 (1908).

[116] G.R. Nos. L-5844-45, May 30, 1955.

[117] III MORAN, COMMENTS ON THE RULES OF COURT 310 (1952).

[118] Rule 123, § 28, Rules of Court.

[119] United States v. Montes, 6 Phil. 443 (1906); United States v. Javellana, 14 Phil. 186 (1909); United States v. Ramos, 23 Phil. 300 (1912); People v. Dizon, 44 Phil. 267 (1922).

[120] See note 8 *supra*.

dying declarations. One statement was taken by the police which was assailed by the defense on the ground that it was neither signed nor thumbmarked by the deceased; and the other was a declaration made by him to his wife concerning the identity of the culprit. Both these statements were considered *ante-mortem* declarations. In the first, the absence of a signature or thumbmark was satisfactorily explained; and the deceased made the second declaration with knowledge of his impending death.

The case of *People v. Ananias* [121] applied the well-established rule that there is no need of establishing in so many words that the deceased was conscious of his impending death before he made the statement. Substantial compliance is enough, it appearing that on that occasion the deceased was in a serious condition and minutes later he died.[122]

2. Res Gestae.

Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of *res gestae*.[123] Whether a declaration is part of *res gestae* or not depends upon whether the declaration is "the facts talking through the party" or "the party talking about the facts," and its admission is addressed to the sound discretion of the trial court.[124] Thus, it was held in the case of *People v. Cuevas* [125] that the statement of Magpantay to one Abarquez, to the effect that the assailant was the defendant herein, "spontaneously and without premeditation under the influence of the startling event which he had witnessed" was a part of *res gestae*, and therefore admissible in evidence.

M. SURVIVORS' TESTIMONY.

Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact accruing before the death of such deceased person or before such person became of unsound mind.[126]

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[121] G.R. No. L-5591, March 28, 1955.

[122] People v. Chan Lin Wat, 50 Phil. 182 (1925); People v. Serrano, 58 Phil. 669 (1933); People v. Muñoz, G.R. No. L-3396, April 18, 1951; People v. Cruz, 50 O.G. 5402 (1954).

[123] Rule 123, § 33, Rules of Court.

[124] People v. Nartea, et al., 74 Phil. 8 (1942).

[125] See note 8 *supra*.

[126] Rule 123, § 26, Rules of Court.

The purpose of this rule is to guard against the temptation to give false testimony in regard to the transaction in question on the part of the surviving party,[127] so that if death has closed the lips of one party, the policy of the law is to close the lips of the other.[128] But this rule is not applicable when the executor, administrator or other representative of the deceased person are sued in their personal capacity and not their representative capacity.[129] This same question was interposed in the case of *Go Chi Gun, et al. v. Co Cho, et al.*[130] It appears in this case that there was a project of partition approved by the court in 1916. The present action was instituted by the plaintiffs for the purpose of annulling such project of partition on the ground that it was procured through fraud. During the trial, however, the plaintiffs, over the objection of the defendants, were allowed to testify as to a supposed statement made to them by the deceased father during his lifetime to the effect that their common father had not left any property, the trial court holding that the action was brought against the defendants in their personal capacity and the claim was not directed against the estate of Paulino, the deceased father. In reversing the trial court, the Supreme Court reasoned out the correct ruling thus:

> "The action of the plaintiffs is based on a supposed fraudulent act of the deceased Paulino Gocheco and its purpose is to allow plaintiffs to share in his estate. That Paulino had died ten years ago and his properties are now in the hands of his children cannot make the action one against his heirs in their personal capacity because their right or title to said properties is not in issue, but the right, the exclusive right thereto of their deceased father. The defendants cannot therefore be said to be sued in their personal capacity."

With respect to the ruling that the suit was not against the estate of the deceased, the Court declared:

> "It should also be noted that in order that the rule may apply, the action must be one which is a 'claim or demand against the estate of a deceased person' and that 'the action is against the executor, administrator or representative' of such deceased person . . . It is evident to us that the insertion of the word 'representative' after the words 'executor or administrator' was made precisely to include specific cases, like the present where the properties of the decedent have already passed from the hands

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[127] Tongco v. Vianzon, 50 Phil. 698 (1925).

[128] Maxilom v. Taboctabo, 9 Phil. 390 (1907); Amante v. Manzano, 71 Phil. 553 (1940); Icard v. Masigan, 71 Phil. 419 (1940).

[129] In fact this was the basis why the trial court admitted the testimony of the plaintiffs, citing the cases of Myers v. Reinstein, 67 Cal. 89, 7 Pac. 192 and Bollinger v. Wright, 143 Cal. 292.

[130] G.R. No. L-5208, Feb. 28, 1955.

> of an executor or administrator to those of his heirs.[121] For there is no reason why the prohibition is applicable when the estate is still under administrator but not when the administration has already ceased or when there was no administrator at all and the estate has passed to the heirs if the right questioned is that of the predecessor and not of the heirs." [122]

From the foregoing reasons, the Court concluded that the testimonies of the plaintiffs in the case at bar, as to the alleged statements of the deceased to them, were well within the purpose and intent of the prohibition.

However, excepted from this rule is the situation where the decedent has been guilty of fraud. It is said that the rule has been adopted to promote justice and not to shield fraud.[123] But in the case under review, the Court found no proof of the supposed fraudulent acts and consequently, did not fall under the exception.

N. CONFESSION.

The rule estates that a declaration of an accused expressly acknowledging the truth of his guilt as to the offense charged may be given in evidence against him.[124] A confession may be defined as an express acknowledgment by the accused in a criminal case of the truth of his guilt as to the crime charged or of some essentials thereof.[125] For a confession to be admissible in evidence, it is a general rule that it must have been made without hope of defeat, without fear or duress and without the use of threats, torture, violence, artifice or deception.[126] In other words, it must have been made volun-

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[121] There is no doubt that the reliance placed by the lower court in the California cases of Myers and Bollinger is untenable in view of the fact that the California Code does not use the word "representative" which the Rules of Court use; so under the California Code it might be plausible to contend that when an estate has passed to an heir, as the action is not against an executor or administrator, the prohibition is no longer applicable.

[122] This reasoning of the Court seems to have been derived from a United States Supreme Court ruling in the case of Fox v. Whitney, 166 U.S. 637, 41 L. Ed. 1145, in which it was said that the rule laid down by the Supreme Court of Utah is more in consonance with the interpretation given it than by the Supreme Court of California in the *Myers* case.

[123] Ong Chua v. Carr, 53 Phil. 975 (1929). But before testimonies of the witnesses are allowed to be introduced the fraud perpetrated by the deceased must be established beyond all doubt not by mere preponderance of evidence. The rule is that fraud is not presumed. As fraud is criminal in nature, it must be proved by clear preponderance of evidence. 37 C.J.S. 393.

[124] Rule 123, § 14, Rules of Court.

[125] United States v. Team, 23 Phil. 64 (1912); UNDERHILL, EVIDENCE 507.

[126] United States v. Agatea, 40 Phil. 596 (1919).

tarily,[137] whether made under oath of not,[138] or while the accused was under arrest,[139] or that the confession was made to persons in authority.[140] There is however an exception to the rule that a confession made to a person in authority upon promise by the latter of immunity is inadmissible; that is, where one of several defendants agree with the prosecuting officer to be one of the state's witnesses [141] but later on retracts and fails to keep his part of the agreement, his confession made under the promise of immunity may be used against him.[142]

Voluntariness of confession may be inferred from its language. If upon the facts it exhibits no signs of suspicious circumstances tending to cast doubt upon its integrity, it is replete with details which could possibly be supplied only by the accused, such condition negates duress.[143] This reasoning was utilized in the cases of *People v. Ganzon* [144] and *People v. Lingad* [145] where the confessions were repudiated on the alleged ground that they were procured through duress, force and undue influence. But the Court held that such claim could not prevail over the combined testimonies of the detectives, and the details given by the accused amply denied the existence of force or duress. So also where the appellant did not complain before the Justice of the Peace where the confession was sworn, he could no longer repudiate his confession later on the ground of maltreatment by the constabulary agents. Such claim was but an "eleventh hour" excuse to bolster up his defense, declared the Court in the case of *People v. Francisco, et al.*[146] Dealing with the alleged coercion in the execution of the questionable affidavit in the case of *People v. De Luna, et al.*[147] the Court held that the testimony, repudiating the contents of the affidavits by the affiant, was "extremely ambigous and indefinite and he repeatedly failed to point out who coerced or threatened him or what acts inspired his alleged fear."

As a general rule, however, a confession is admissible only against the declarant but not against his co-defendants as to whom

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[137] People v. Pulido, 47 O.G. 458 (1951).
[138] United States v. Corrales, 28 Phil. 362 (1914).
[139] United States v. Castro, 23 Phil. 67 (1912).
[140] United States v. So Fo, 23 Phil. 379 (1912); United States v. Perez, 32 Phil. 163 (1915); United States v. Tan Tiap Co, 35 Phil. 611 (1916).
[141] Rule 115, § 11, Rules of Court.
[142] People v. Panaligan, 43 Phil. 131 (1922).
[143] People v. Cruz, 73 Phil. 651 (1942).
[144] G.R. No. L-6872, May 21, 1955.
[145] G.R. No. L-6989, Nov. 29, 1955.
[146] G.R. No. L-6270, Feb. 28, 1955.
[147] G.R. No. L-6974, May 18, 1955.

said confession is hearsay evidence.[148] This settled rule was reiterated in the case of *People v. Yatco, et al.*,[149] the Court holding that even granting that Consunji's confession may not be competent as against his co-accused Panganiban, being hearsay as to him, or to prove conspiracy between them, the confession was nevertheless admissible as evidence of the declarant's own guilt and should have been admitted as such.

O. ALIBI.

In common parlance, the defense of alibi simply means the absence of the accused at the scene of the crime at the time of its commission and therefore the accused could not have been the perpetrator of the crime. This is the weakest defense that can be resorted to,[150] easiest to concoct,[151] and requires positive, clear and satisfactory evidence to substantiate it.[152] But weak as it is, it was held in one case [153] that it is not entirely useless, for in the face of an air-tight alibi testified to by witnesses whose credibility is apparent and positive, doubt may be engendered to an extent favorable to the accused.

The defense of alibi was rejected in the case of *People v. Lingad, et al.*[154] on the face of the positive identification of the accused and the facility with which the alibi was fabricated. Similarly, in the cases of *People v. Mamadra*,[155] *People v. Unay*,[156] *People v. Macion*,[157] *People v. Bensal*,[158] *People v. Tulale*,[159] and *People v. Custodio*,[160] such defense was discredited due to the positive and sufficient identification of the offenders by creditable and reliable witnesses of the prosecution. Identification becomes even more reliable when it is not only sufficient but the role played by each of the accused is depicted by the victims. This was the substance of the ruling in the case of *People v. Caubat, et al.*,[161] where the Court refused to believe the defense of alibi. In the case of *People v. Velayo*,[162] it was held that

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[148] *E.g.*, People v. Durante, 47 Phil. 654 (1925); People v. Linao, 58 Phil. 116 (1933); People v. Buan, 64 Phil. 296 (1937).
[149] G.R. No. L-9181, Nov. 28, 1955; 51 O.G. 6187 (1955).
[150] III MORAN, COMMENTS ON THE RULES OF COURT 15 (3rd. ed.).
[151] People v. De Asis, 61 Phil. 384 (1934).
[152] People v. Limbo, 49 Phil. 94 (1926); People v. Pili, 51 Phil. 965 (1928).
[153] People v. de los Santos, G.R. No. L-4880, May 18, 1953.
[154] G.R. No. L-6989, Nov. 29, 1955; 51 O.G. 6191 (1955).
[155] G.R. No. L-6580, Aug. 20, 1955.
[156] G.R. No. L-5590, June 23, 1955.
[157] G.R. No. L-7027, Aug. 30, 1955.
[158] G.R. No. L-8265, Oct. 31, 1955.
[159] G.R. No. L-7233, May 18, 1955.
[160] G.R. No. L-7442, Oct. 24, 1955.
[161] G.R. No. L-7285, June 28, 1955.
[162] G.R. No. L-7257, Feb. 8, 1955.

negative testimonies to support an alibi could not prevail over the positive testimonies of the prosecution witnesses; more so when the accused had been well-known to the witnesses for a long time before the incident, as was held in the case of *People v. Tulale,*[163] or when the defense witnesses were the close relatives of the accused as was the case in *People v. Monadi, et al.,*[164] and in *People v. Aclon,*[165] alibi could not serve any purpose.

The weakness of the defense of alibi becomes even more patent when, as in the case of *People v. Tabalba,*[166] besides disagreement on some points between his witneses and the defendant himself, the latter's testimony was contradicted by his own written declaration. In such situation, the Court did not hesitate to discredit his testimony. Can alibi be interposed when the facts show that there is no impossibility of the accused being at the scene of the crime at the time of its commission? This seemed to be the question answered in the case of *People v. Notarte* [167] where the Court declared that "there is no impossibility for the appellant to have absented himself unnoticed from the store of Iramia and after shooting Benjamin Giray, returned thereto, the distance from the store to the house of the victim being only three kilometers."

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[163] G.R. No. L-7233, May 18, 1955.
[164] G.R. Nos. L-3770-71, Sept. 27, 1955.
[165] G.R. No. L-5507, Feb. 28, 1955.
[166] G.R. No. L-4643, April 30, 1955.
[167] G.R. No. L-6371, Sept. 28, 1955; 51 O.G. 5137 (1955).

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