EVIDENCE—1958

PABLO B. BADONG * AND SALVADOR J. VALDEZ, JR.**

Save for a few cases where new doctrines were announced, the decisions of the Supreme Court for the year 1958 in Evidence were merely reiterations of previous rulings.

ADMISSIBILITY OF EVIDENCE

A. *Best Evidence Rule*

A question of first impression in this jurisdiction was squarely presented before the Supreme Court in the case of *Testate Estate of Felicidad Esguerra Alto-Yap*[1]: Is oral testimony admissible for the purpose of proving the contents and due execution of a holographic will? In other words, may a holographic will be probated upon the testimony of witnesses who have allegedly seen it and who declare that it was in the handwriting of the testator? The Court flatly answered the question with a ready "no." Only the holographic will itself is admissible as evidence of its authenticity and due execution.[1a] Bare testimony can not prove the execution and contents of a lost or destroyed holographic will. Justice Bengzon intimated, however, that it may be established by some other evidence: "Perhaps it may be proved by a photostatic or photographic copy. Even a mimeographed or carbon copy; or by other similar means, if any, whereby the authenticity of the handwriting of the deceased may be exhibited and tested before the probate court."

In this *Yap* case, the Court gave the reasons why ordinary wills may be proved by testimonial evidence, while holographic wills may not be:

> "(1) In holographic wills, the only guarantee of authenticity is the handwriting itself; in ordinary wills, the testimony of the subscribing or instrumental witnesses (and of the notary, now). The loss of the holographic will entails the loss of the only medium of proof; if the ordinary will is lost, the subscribing witnesses are available to authenticate it.
>
> "(2) In ordinary wills, fraud cannot be easily perpetrated because of the requirement of three witnesses; in holographic wills, one man can easily engineer the fraud.
>
> "(3) In the case of a lost will, the three subscribing witnesses would be testifying to a fact which they saw, namely, the act of the testator of subscribing the will; whereas, in the case of a lost holographic will, the witnesses would testify as to their opinion of the handwriting which they allegedly saw, an opinion which can not be tested in court, nor directly contradicted by the oppositors, because the handwriting itself is not at hand."

In this case, the Supreme Court noted that under the provisions of article 838 of the new Civil Code, it is empowered to adopt this opinion as a Rule of Court for the allowance of holographic wills. It did not, however, declare this opinion decisive of this case itself.

In *Batangas Transportation Co. v. Reyes*,[2] the Court had occasion to pass upon the question of whether reports of bus inspectors may be admitted in evidence, as an exception to the hearsay rule. In reversing the ruling of the Public Service Commission, the Court held:

---

* Administrative Assistant, *Philippine Law Journal*, 1957-1958; Chairman, Student Editorial Board, *Philippine Law Journal*, 1958-1959.
** Book Review Editor, Student Editorial Board, *Philippine Law Journal*, 1958-1959.

[1] G.R. No. L-12190, Aug. 30, 1958.

[1a] Citing RULES OF COURT Rule 123, sec. 46.

[2] G.R. No. L-10629, Oct. 31, 1958.

"The decision of the majority of the members of the Commission held that the reports of the inspectors, Exhibits 7, 8 and 9 are not admissible because they are not the originals and that even if they are admissible the same are self-serving. The majority erred in this respect. The reports of the inspectors were prepared by them from notebooks just after the inspection and in the ordinary course of business. They should be considered originals because the notes were actually written by the inspectors themselves on their record notebooks immediately after making the inspection and immediately thereafter, after coming down from the buses, they copy the notes taken down and write them in their reports." [8]

In *J. M. Tuason & Co., Inc. v. Villanueva, et al.*,[4] the plaintiff originally presented the original transfer certificate of title but later on substituted it with a photostatic copy of the same, with the approval of the court and without objection from the appellants. The Supreme Court found no irregularity in the substitution of the evidence.

B. *Depositions*

The case of *Firestone Tire & Rubber Co. (P.I.) v. Delgado, et al.*,[5] arose out of an action for the recovery of a debt. The lower court rendered judgment in favor of the plaintiff and ordered the suppression of defendant's deposition which was taken on a legal holiday. The issue presented was whether a deposition taken on a legal holiday is admissible. The Supreme Court declared as follows:

"As regards the taking of a deposition on a holiday, we find that the authorities are conflicting. While it has been held that a deposition may ordinarily be taken on a holiday,[6] it has also been held that the taking of a deposition on a holiday is within a prohibition of judicial business on such day.[7] Under this later rule, deposition taken on a legal holiday, under notice specifying that day, without the consent of the parties should be suppressed upon motion of the opposing party." [8]

The Court did not commit our jurisdiction to either of these lines of decisions.

C. *Real Evidence*

The defendant in *People v. Aquino*,[9] was prosecuted for the crime of rape. The prosecution presented, and the Court considered in evidence, the offended party's torn underwear stained with blood (Exhibit "C") and supported by a doctor's medical certificate.

D. *Hearsay Evidence*

In *People v. Pasa, et al.*,[10] Pasa and others were convicted of theft in the Court of First Instance of Camarines Sur. A motion to re-open the case was filed on the ground of newly discovered evidence. The alleged newly discovered evidence was an affidavit executed by the offended party, Jorge Ventayen, to the effect that the offense charged was committed only by Isidoro Villareal, one of the accused, without the assistance of his co-accused.

The record showed that the crime was perpetrated in the Municipality of San Jose, Camarines Sur when the offended party Jorge Ventayen and his wife

[8] RULES OF COURT Rule 123, sec. 47.
[4] G.R. No. L-10522, Sept. 30, 1958.
[5] G.R. No. L-11162, Dec. 4, 1958.
[6] American Automatoneer Co. v. Proter, 205 F. 105; Latta v. Catawba Electric Co., 59 S.E. 1028; Green v. Walker, 41 N.W. 534; Leach v. Leach, 27 Pac. 181; Ann. Cas. 1916E, 851, 852; 19 L.R.A. 320; Rogers v. Brooks, 80 Ark. 612; Field v. Collins, 92 S.W. 2d 795.
[7] 50 AM. JUR. 863.
[8] Dixon v. Dixon, 79 S.E. 1016; State v. Bailey, 42 N.J.L. 182; Stewart v. Brown, 20 S.W. 451; *see also* 26A C.J.S. 389.
[9] G.R. No. L-12123-24, July 31, 1958.
[10] G.R. No. L-11616, April 18, 1958.

were in Naga, Camarines Sur. So the Court *held:* The affiant's knowledge about the commission of the offense was based, therefore, upon *information* given to him when he returned to San Jose *after* the occurrence, and his testimony on the identity of the perpetrator of the crime would be hearsay.

It is a settled rule, however, that evidence, though hearsay, is admissible if not objected to at the proper time.[11] In *People v. Aquipo, supra*, the Court noted that no rebuttal evidence was presented nor attempted to be given by appellant, who instead waived the presentation of the same in his favor. It is settled, the Court further observed, that the admission made by the accused cures the defects of the evidence for the prosecution, especially so where no evidence has been presented by the defendant to impugn or rebut the theory of the government.[12]

E. *Confessions*

The declaration of an accused expressly acknowledging the truth of his guilt as to the offense charged, may be given in evidence against him.[13] Thus, in *People v. Cruz*,[14] the extrajudicial statements of Cruz and Rubillos acknowledging their participation in a crime of murder were taken—separately—against them. During the trial, they made a desperate attempt to repudiate their written confessions, saying that they were made after they had been subjected to torture, force and intimidation. But the Supreme Court brushed aside this pretension, holding that the confessions were voluntarily made as they were corroborated by other evidence. The instruments and other effects of the crime were found in the places indicated in the confessions. Moreover, it was sufficiently established that after making the confessions, Cruz and Rubillos were taken before the City Atorney who had the contents of said confessions read to them. He asked them if there was any irregularity committed in relation to the taking of the statements, or if they had any complaint to make, and only after receiving a satisfactory answer did he administer the oath to them in his capacity as City Attorney.

In *People v. Francisco*,[15] it appears that with respect to the extrajudicial confessions of Dagundong and Saldariaga, Exhibits C and Y, respectively, linking Robles not only to the conspiracy but also to actual participation in the commission of the crime, both the trial court and the Solicitor General, to render said extrajudicial declarations binding on Robles, rely on the following doctrine:

> "While a defendant's extrajudicial declaration is generally admissible only against him and not against a co-defendant, it has already been held that when, as in this case, the extrajudicial declarations of several co-defendants charged with a conspiracy are secured without collusion and materially identical and confirmatory of a judicial confession by another defendant, the same are admissible against all the other defendants." [16]

The Court refused to adopt this contention and concluded that Robles was entitled to an acquittal, reasoning as follows:

> "It will readily be noticed from the above-quoted doctrine, however, that in order that an extrajudicial declaration of a conspirator shall apply and bind a co-conspirator, it is necessary that said declaration be confirmed by the testimony in court of a co-conspirator. The only co-conspirator who testified in court about the conspiracy and

[11] Diez v. U.S., 223 U.S. 442 cited in 3 MORAN, COMMENTS ON THE RULES OF COURT 881 (1952 ed.).
[12] People v. Cruz, G.R. No. L-860, April 29, 1947; *see also* People v. Bantugan, 28 O.G. 147, 4878.
[13] RULES OF COURT Rule 123, sec. 14.
[14] G.R. No. L-8778, May 19, 1958
[15] G.R. No. L-10397, Oct. 16, 1958.
[16] People v. Go, et al., *supra*, citing People v. Badilla, 48 Phil. 718, 725-726.

about the actual participation of Robles in the crime was San Miguel. He did not say that he saw Robles taking part or even being present at the scene of the crime when the same was committed. On the contrary, he told the Court that he did not see Robles. Consequently, the extrajudicial declarations, Exhibits C and Y, cannot bind Robles, for the reason that they do not confirm or strengthen any judicial declaration.

"Moreover, although his co-defendants Izon, Sâldariaga, Dagundong and Plomantes presented Jose Torres, a false witness, to deceive the Court and lead it to believe that it was he and not the defendants who committed the crime of robbery with homicide, Robles alone disdained such subterfuge and underhanded tactics, presumably convinced and satisfied that he could legally clear himself of the unfounded charge; all this, in addition to the defense of alibi which he interposed. In all conscience, we are not prepared to find that Robles' guilt has been established beyond reasonable doubt . . ."

In *People v. Rodriguez, et al.*,[17] accused was one of the defendants charged with the killing of one name Tagle. Immediately after his arrest and long before he knew that he would one day become a witness for the prosecution, he gave a verbal confession which was later reduced to writing, naming his co-accused as his companions in the crime. His testimony on the witness stand was in substance a repetition of his written extrajudicial statement. The Court held that considered together with the testimony of one Malihan, such statement is entitled to full faith and credit.[18] Subsequently, however, accused made a complete turn-about and retracted from his previous confession. The Court hardly gave any scant consideration to this retraction, holding that:

". . . It is easy to understand that after Desiderio (accused) was relieved from responsibility for the murder of Tagle, he would now submit and yield to the pressure that appellants or their families may have possibly exerted upon him, but we cannot give to his retraction any value or consideration."

And in the case of *People v. Ortiz, et al.*,[19] where defendants were accused of robbery with rape which they perpetrated successively from house to house, it appeared that an investigation was conducted by the chief of police, after which accused executed confessions. The statements were in answer to questions propounded by the justice of the peace, which were also reduced to writing. The Court held that "these statements form part of the evidence."

Finally, in the case of *People v. Monroy, et al.*,[20] the accused were charged and convicted of murder. The deceased, Agdeppa, was pelted with stones and later hacked to death. The Court affirming their conviction held:

"The violent death of Elpidio Agdeppa on the night of October 10, 1954 is not questioned. The necropsy report, confirmed by the testimony of Doctor Avelino, leaves no doubt that Agdeppa died as a result of a homicidal attack. With the *corpus delicti* thus independently established, the voluntary confessions of appellant Monroy and his companion Idica (who withdrew his appeal) fully support the conviction because they confirm the testimony of eyewitnesses Guillermo Lacuesta and Jose Sarte.[21]

With respect to the contention that the confessions in question were extracted through duress, the Court observed:

". . . The affiants, she continued (the justice of the peace), even told her that 'they were just telling the whole truth and nothing but the truth.' This testimony, coupled with the substantial uniformity of both declarations as to the details in the commission of the crime, which only the accused knew and could relate in the way it was given, more than convinces us to their veracity." [22]

---

[17] G.R. No. L-11498, May 30, 1958.
[18] U.S. v. Pajarillo, 19 Phil. 288; People v. De Otero, 51 Phil. 202; People v. Borbano, 76 Phil. 702.
[19] G.R. No. L-12287, May 29, 1958.
[20] G.R. No. L-11177, Oct. 30, 1958.
[21] People v. Quanzon, 62 Phil. 162; People v. Bantagan, 54 Phil. 834.
[22] *Cf.* People v. Andallo, et al., G.R. No. L-9173, May 29, 1957.

The Supreme Court also had occasion to define the effects of a judicial confession in *People v. Nieto*,[23] where the accused, with the assistance of her counsel, entered a plea of guilty to an information charging her with homicide. The trial judge, nevertheless, acquitted her on the ground that she was a minor over nine and below fifteen and the information failed to allege that she acted with discernment.[24] It is to be noted in this case that the information contained no allegation as to the age of the accused.

Prosecution, thereafter, filed another information for the same offense, now stating that accused is over nine and below fifteen and that she acted with discernment in the commission of the crime. This second information was dismissed on the ground of double jeopardy.

Held: The accused could have been held answerable on her plea of guilty, for the first information aver facts constituting the offense charged, with nothing therein to indicate that she, as perpetrator thereof, was exempt from criminal liability because of her age, and her plea of guilty to the information is an unqualified admission of all its material averments. And, indeed, even under the view taken by the trial judge who acquitted her, that because she was between nine and fifteen—although the fact does not appear in the information to which she pleaded guilty—an allegation that she acted with discernment is required, that requirement should be deemed amply met with the allegation in the first information that she, the accused, "with intent to kill did then and there wilfully, criminally, and feloniously push one, Lolita Padilla, a child eight and one half (8½) years of age into a deep place of the Peñaranda River and as a consequence thereof Lolita Padilla drowned and died right then and there."

The Court lamented that because of an error of the trial court a miscarriage of justice has resulted—but the rule on jeopardy has to be applied and hence, the dismissal of the second information had to be affirmed.

F. *Admissions*

Attorneys when properly acting within the scope of their authority, are agents of their clients. So, an attorney's act or declaration in a case may bind and prejudice his client.[25] The case of *Talens v. Chuakay*,[26] illustrates the application of this principle. It appears that on April 15, 1933, Teodoro Talens and his brothers and sisters, registered owners of a parcel of land, mortgaged said land to M. Chuakay & Co. to secure a debt of ₱900 payable within one year from that date with interest at 12% *per annum*. Some twenty-one years thereafter, that is, on August 12, 1954, with the principal of the debt unpaid, the mortgagors then living and the heirs of those who had died brought suit to have the mortgage annotation cancelled, alleging that action on the mortgage had already prescribed. Answering the complaint, the defendant mortgagee controverted the claim of prescription with averment to the effect that the mortgagors had, before the last war, paid the stipulated interests up to 1941 and that, thereafter, the period for foreclosing the mortgage was suspended by the Japanese occupation and later by the debt moratorium decreed by the government. Defendant asked, by way of counterclaim, that the mortgage be foreclosed. Replying to defendant's counterclaim, plaintiffs admitted the averment therein as to the payment of interests up to 1941; but before trial they sought

[23] G.R. No. L-11965, April 30, 1958.
[24] *See* REVISED PENAL CODE Art. 12 (3).
[25] RULES OF COURT Rule 128, sec. 11; Rule 127. *See* People v. Ganiban, G.R. No. L-4165, Aug. 28, 1952.
[26] G.R. No. L-10127, June 30, 1958.

to avoid the effect of this admission by filing an amended reply denying the said averment for alleged lack of knowledge or belief as to its truth.

> *Held:* ". . . it is first necessary to note that, as found by the trial court—and the finding is justified by the record—the interest on the mortgage was paid until April 15, 1941. Such payment being a recognition of the existence of the debt, prescription did not begin to run until that date. . . . Then, it should also be noted that between that date, April 15, 1941, and the filing of the counterclaim for foreclosure on September 6, 1954, the running of the period was interrupted twice: first, by war and thereafter, by the debt moratorium. . . . Adding the period of the moratorium to that during which the Court of First Instance of Nueva Ecija was closed and excluding the total from the time that elapsed from the date prescription commenced to run to the date of the filing of the counterclaim for the foreclosure of the mortgage, it will be seen that the said counterclaim was set up in court within the prescriptive period.
>
> "It is not true as contented for plaintiff-appelants that there is no support for the finding below that interest was paid on the mortgage up to April 15, 1941. Such payment was admitted in their original reply to defendant's answer and that reply, on being formally offered in evidence, was properly admitted and made to prevail over their bare denial, which was not even categorical, being qualified with the statement that they lacked knowledge or belief as to the truth of the allegation that interest on their own debt was paid up to 1941. . . . In that connection, we have to reject their claim that the admission was not authorized by them, or that it was beyond the authority of their counsel to make . . . The admission did not redound to their benefit because, contrary to the opinion apparently held by their counsel that prescription began to run from the maturity of the mortgage, the court took the view . . . that prescription commenced to run only from the last payment of interest. Whether it is one or the other view that is correct is a legal question whose determination, plaintiffs be deemed to have entrusted to their lawyer so that they cannot now be heard to say that the admission made by him on their behalf was not authorized."

People v. Yu Bao,[27] involves a prosecution for violation of Republic Act No. 1180, otherwise known as "An Act to Regulate the Retail Business." Yu Bao, the accused, raised as one of his defenses the allegation that he is not an alien and, therefore, he does not come within the purview of the law. Francisco Basa, assistant chief of the license division of the Office of the Treasurer of Quezon City, testified that appellant Yu Bao personally applied for a license to open a retail store and signed his application in Basa's presence, and that in said application, appellant furnished the information that he is the holder of Alien Certificate of Registration No. 32580.

The Supreme Court held that such information, supplied by appellant himself, amounts to an admission that he is an alien. Moreover, the Court went on, appellant in his motion for continuance stated: "that if the Supreme Court should hold said Republic Act No. 1180 unconstitutional, the above-entitled case would have to be dismissed. On the other hand, should the Court uphold said Act, there would be no need to try the above entitled case for the accused would have to plead guilty (to an information alleging that he is an alien)." The foregoing statement which is in the nature of a judicial admission spread on the record of the case is confirmatory of appellant's alienage.

In *Lin Fire & Marine Ins. Co. v. American President Lines*,[28] and *Escudero v. Lucero*,[29] the Court reiterated the rule that failure of a party to deny the material allegations set forth in the adverse party's pleadings can ordinarily be interpreted as an admission of the truth of said allegations.

G. *Conduct as Evidence of Guilt*

Is the attempt to compromise an implied admission of culpability? The Court in *People v. Frigillana*,[30] held:

---

[27] G.R. No. L-11324, March 29, 1958.
[28] G.R. No. L-11081, April 30, 1958.
[29] G.R. No. L-11578, May 14, 1958.
[30] G.R No. L-10030, Oct. 22, 1955.

> "Finally, neither the alleged motive for the crime nor his attempt to settle the case help to establish the guilt of the appellant. In the first place, the fact that he had to pay damages for his previous attempt to take the law in his own hands does not appear adequate reason for the accused to undertake the murder of De Vera and his wife, considering that he paid damages voluntarily, in order to compromise the case instituted against him. And altho an attempt to settle a criminal case is circumstantial evidence of guilt, in this case, the refusal of the appellant to meet the demands of the widow and his stubborn insistence to pay not more than five hundred pesos, despite the gravity of the charge levelled at him, point more to a consciousness of innocence and to a desire to avoid harassment than to an admission of culpability."

But flight from the scene of the crime may be evidence of guilt for the commission thereof. The accused in *People v. Bacsa*,[31] was charged with robbery with homicide plus multiple rapes. His identity was positively established by eyewitnesses. In addition, the Court observed:

> "Strongly confirming such direct evidence by eyewitnesses, is the circumstance that the accused, a few months after the crime, probably when the investigation yielded some evidence against him, left his place of residence, sold his horse and calesa, even his house, and went to live in different towns, evidently concealing his whereabouts, because he was not apprehended until February, 1952, notwithstanding a warrant for his arrest had been issued on March 31, 1951. He gave no reason for his departure and prolonged absence. Needless to say, flight when unexplained is proof of guilt." [32]

In the case of *People v. Garduque, et al*,,[33] the Court in sustaining the conviction of the appellant held: "Moreover any doubt as to their guilt is dispelled entirely by the behavior of their co-accused Prudencio Miguel who is now serving his sentence for the crime charged in the information, and the flight of Benjamin Castillo some three months after the reading of the sentence appealed from, which may be considered as an admission of guilt."

And in *People v. Remo*,[34] the appellant's strange behavior in not condoling with her sister who was the wife of the deceased was taken against him. Said the Court:

> ". . . It is only natural that a brother should share his sister's misfortune and grief. Yet, appellant, hearing of the murder of his brother-in-law, admittedly never came to his sister's side to condole with her or help find her husband's murderer, without giving any plausible reason therefor. Instead, appellant disappeared from the place, without even bidding his sister good-bye and was next seen only after he was arrested for murder, five years hence."

Finally, Francisco Robles, Jr. was one of those found guilty of frustrated robbery in band with homicide under article 297 of the Revised Penal Code, in conspiracy with several other co-defendants. On appeal, the Supreme Court in this case of *People v. Robles, et al.*,[35] took note of the fact that throughout the whole proposal and discussion among his co-defendants, Robles uttered not a word either of approval or disapproval . There are authorrities, the Court observed, to the effect that mere presence at the discussion of a conspiracy, even approval of it, without any active participation in the same is not enough for purposes of conviction.[36]

H. *Wounds as Evidence*

In *People v. Guerero, et al.*,[37] the Court rejected the theory of the defense that the accused just hit the deceased and that he did not beat him to death as

---

[31] G.R. No. L-11485, July 11, 1958.
[32] U.S. v. Sarikala, 37 Phil. 486; U.S. v. Virrey, 37 Phil. 618.
[33] G.R. No. L-10133, July 31, 1958.
[34] G.R. No. L-11352, April 28, 1958.
[35] G.R. No. L-10397, Oct. 16, 1958.
[36] 15 C.J.S. 1062.
[37] G.R. No. L-9559, May 14, 1958.

alleged in the information. The Court's conclusion was based on the finding that when the body of the deceased was examined, it was disclosed that the skull at the nape was broken and so were the bones at the back—which show that accused must have beaten him to death and not merely hit him.

I. *Dying Declarations*

In *People v. Frigillana*,[38] defendant was found guilty of the crimes of murder and frustrated murder. One of the pieces of evidence adduced was Exhibit "F" purportedly the dying declaration of the deceased. The Court found no convincing reason for attaching any weight to this document. It doubted whether the alleged dying declaration was really made by the deceased, since the Chief of Police himself admitted that the statement was merely his own interpretation of the lip movements of De Vera; the latter, when questioned in the municipal building, was too weak to speak audibly. The incapacity of the deceased to speak at the time was supported by Dr. Felipe C. Mangaser, resident physician of the provincial hospital. In addition, it did not appear established to the Court that the statement as taken down by Runas was read to De Vera nor was it otherwise acknowledged by him before he expired; hence, there is no evidence, the Supreme Court concluded, that De Vera's efforts to speak were correctly interpreted by the Chief of Police.

One of the essential requisites of an *ante-mortem* declaration is that the declarant must have been under the pressing consciousness of death when the statement is made. In *People v. Moises, et al.*,[39] accused was convicted of robbery with homicide. One of the issues raised was whether the statements of the victim while on the operating table should be regarded as *ante-mortem* declarations, admissible in evidence as an exception to the hearsay rule. The Court considered the fact that according to the physician in charge, the patient was very weak, in serious condition, in a slight shock due to bleeding, so much so that he was not allowed to talk. He merely nodded and/or pointed with the finger when identifying the robbers; moving his head side-ways to signify "no." He (the patient) even expressed doubts that he will survive under the circumstances. The Supreme Court concluded that "on the authority of our rulings[40] the evidence was admissible. The fact that he died not immediately, but five days afterwards, does not affect its admissibility.[41] Anyway, granted the declaration could not be classed as *ante-mortem*, inasmuch as no objection was offered to the testimony of Dr. Narciso Reyes, Edgardo Gutierrez and Patricio describing the process of identification, it may be considered as evidence part of the *res gestae*." [42]

Among the evidence presented by the accused Castillo in *People v. Castillo, et al.*,[43] was a document, Exhibit 4, purporting to be an *ante-mortem* statement of the deceased Guariño that it was Machica, and not Castillo, who shot him. This document was not admitted by the Court because the record shows that it was prepared by Castillo, who caused the thumbmark of the deceased to be affixed thereto when Guariño was already dead. Mayor Pabelonia, before whom it purports to have been sworn admitted that the deceased did not state to him under oath that the contents of Exhibit 4 are true; that the deceased did not say a single word to him in connection with said document; that two policemen (colleagues of Castillo) held the deceased by the armpits, with his arms

[38] *Supra*, note 30.
[39] G.R. No. L-10876, Sept. 23, 1958.
[40] People v. Aedosa, 53 Phil. 788; U.S. v. Viray, 37 Phil. 618; People v. Ancasan, 53 Phil. 779; People v. Diokno, 68 Phil. 601.
[41] People v. Lara, 54 Phil. 96 (six weeks); Cruz v People, 71 Phil. 350 (12 days).
[42] People v. Palames, 49 Phil. 601
[43] G.R. No. L-10555, May 30, 1958.

hanging on both sides, while Castillo was preparing Exhibit 4; that when Pabelonia asked the deceased whether the contents thereof were true, the deceased's head merely bowed; that the head was never raised thereafter; and that Pabelonia did not verify whether the deceased was already dead or was still alive.

In *People v. Trinidad*,[44] the only objection raised to the admission of the *ante-mortem* statement of the deceased identifying Trinidad as the perpetrator of the crime was the allegation that the deceased could not have made the declaration because judging from the nature of the wounds, the victim's death must have been instantaneous. Death was admittedly caused by shock and hemorrhage produced by the bullet that entered the left buttock and came out of the right buttock piercing the urinary bladder.

Held: The medical experts, who testified in this case, themselves admitted the possibility of exceptional cases wherein a victim sustaining the same nature of wounds lived three or even ten minutes. This must have been an exception because several persons talked with the deceased after the shooting. Even a witness for the defense tried to ask the wounded man the identity of the murderer, which goes to show that the victim had not instantly died; otherwise, who would talk to a dead man? Also, it must be true that the victim did not instantly die, because his relatives still tried to bring him to the *poblacion* for medical treatment.

People v. Remo,[45] is another case where the dying declaration of the offended party was admitted and given credence because it was corroborated by credible prosecution witnesses.

J. *Parts of the res gestae*

Evidence which does not meet all the requirements of a dying declaration may still be admitted in evidence as part of the *res gestae*. Thus, in *People v. Ramirez*,[46] accused appellant was convicted of murder, for the killing of one Manalo. Immediately after the incident and before Manalo was brought to the provincial hospital of Calapan, Mindoro, his statement was right away taken down by the Chief of Police because Dr. Sulit, one of the witnesses to the affixing of declarant's thumbmark, urged the Chief of Police to rush it as Manalo might die at any moment, as he in fact died early the following morning at the provincial hospital where he was taken to posthaste. The Supreme Court in finding the conviction of the accused amply supported by the evidence, held: "And, lastly, the deceased himself in his statement, Exhibit 'E', which may be considered as part of the *res gestae* for it does not meet all the requirements of a dying declaration, asservates that he was stabbed all of a sudden from behind, without a word being said."

K. *Documents as Evidence*

Documents in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Spanish, or unless it is in the national language.[47] This rule was applied in *Lagmay v. Quinit*,[48] which presents the following facts: At the back of a deed of sale with a right to repurchase executed by Basto in favor of Quinit appears a notation in the Ilocano dialect which is claimed by Lagmay to be in turn a deed of absolute sale over the same parcel of land covered by the first deed, executed in his

[44] G.R. No. L-10613, March 28, 1959
[45] *Supra*, note 34.
[46] G.R. No. L-10951, Oct. 23, 1958.
[47] RULES OF COURT Rule 123, sec. 57.
[48] G.R. No. L-10902, Jan. 31, 1958.

favor by Quinit. Basto failed to exercise his right of repurchase; hence, absolute ownership consolidated in Quinit. Lagmay is now caliming a right over the land pursuant to the terms of the aforesaid notation. The offer of the notation in evidence was rejected by the Court, no translation into the official language having been made thereof.

In *Subieng v. Republic*,[49] the Court declared that an Alien Certificate of Residence and a Native Born Certificate of Residence are official documents issued by immigation authorities which, if uncontested, is sufficient to establish the fact of a person's having been born in the Philippines. On the same principle, a Certificate of Registration of Trade-mark has been held to be a *prima facie* evidence of the validity of the registration of a trade-mark.[50]

L. *Common Reputation*

The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members,[51] was resorted to and sustained to establish the allegation of continuous possession of the status of an acknowledged natural child in *Christensen v. Christensen*.[52] Maria Lucy Christensen was born on April 25, 1922, and Maria Helen Christensen on July 2, 1934, of the same mother, Bernarda Comporedondo, during the period when the latter was publicly known to have been living as the common law wife of the testator, Edward Christensen. There was no dispute as to Lucy's parentage. But a controversy arose when Edward Christensen, in making his last will and testament, disavowed paternity to Helen and gave her only a legacy which falls short of her legitime if she were considered an acknowledged natural child, as she claims herself to be. To support her claim that she, like Lucy, is a natural child of the deceased, and therefore, entitled to the hereditary share corresponding to such descendant, Helen introduced: (1) the testimony of several witnesses, including her mother Bernarda Comporedondo, her teachers and other residents of the community, tending to prove that she was known in the locality as a child of the testator and was introduced by the latter to the circle of his friends and acquaintances as his daughter; and (2) family portraits, greeting cards and letters where she had been treated by the deceased and by Lucy herself as a member of the family. The Supreme Court affirmed the trial court's decision admitting these evidence and giving them due weight in favor of Helen. As to the disavowal in the will, it was established that despite the testator's desire that she continue her studies, Helen ignored him and got married to a man for whom he held no high esteem. From this the Court picked on to say:

> "The testator's last acts cannot be made the criterion in determining whether opposition was his child or not, for human frailty and parental arrogance sometimes draw a person to adopt unnatural or harsh measures against an erring child or one who displeases him just so the weight of his authority could be felt. In the consideration of a claim that one is a natural child, the attitude or direct acts of the person against whom such action is directed or that of his family before the controversy or during his lifetime if he predeceases the claimant, and not at a single opportunity or on isolated occasions but as a whole, must be taken into account."

M. *Illegally Obtained Evidence*

The case of *Wong & Lee v. Collector of Internal Revenue*,[53] presents an appeal from a decision of the Court of Tax Appeals holding petitioner liable for

[49] G.R. No. L-10234, Jan. 24, 1958.
[50] People v. Lim Hoa, G.R. No. L-10612, May 30, 1958.
[51] RULES OF COURT Rule 128, sec. 31.
[52] G.R. No. L-11483-84, Feb. 14, 1958.
[53] G.R. No. L-10155, Aug. 30, 1950.

deficiency amusement tax, including surcharges with costs. The Court of Tax Appeals relied on Exhibits 2-11 consisting of chits, and working sheets as evidence of the total amount of cover charges received by petitioner from the Riviera Night Club during the Xavier Cugat Show which petitioners delivered to Ted Lewin in accordance with their contract. They contended that the exhibits in question were illegally obtained by the agents of the Bureau of Internal Revenue. On this question, the Court held:

> "As to the admissibility of this kind of evidence it is the established doctrine in this jurisdiction that documents offered in evidence, if competent and relevant, are admissible, no matter how they were obtained, whether legally or illegally." [54]

N. *Statute of Frauds*

Settled is the rule in this jurisdiction that the Statute of Frauds [55] is applicable only to executory contracts, not to contracts which are totally or partially executed.[56] Certain difficulties, however, may yet arise in the application of this rule. When, for instance, may we consider a contract partially executed? And may parol evidence be admitted to establish such partial performance? The Supreme Court answered these queries in the interesting and enlightening cases of *Ortega v. Leonardo*,[57] and *Carbonnel v. Poncio*.[58]

In the *Ortega* case, it was shown that plaintiff Ortega had long been in possession of a lot in San Andres St., Malate, Manila. When the Rural Progress Administration was given the administration and disposition of said lot (together with other lots in the Ana Sarmiento Estate) in the exercise of its power to purchase estates for resale to their occupants, plaintiff asserted her right thereto as occupant for purposes of purchase. Defendant Leonardo asserted also a similar right alleging occupancy of a portion of the land subsequent to plaintiff's. Because of these conflicting claims, the Rural Progress Administration conducted an investigation during the pendency of which defendant entered into an oral agreement with plaintiff whereby he asked the latter to desist from pressing her claim and definitely promised that if he succeeded in getting title to the lot he would sell to her a portion thereof, provided she pays for the surveying and subdivision of the lot. It was further stipulated that after he acquired the title, she could continue holding the lot as tenant by paying a monthly rental of ₱10.00 until said portion shall have been segregated and the purchase price paid. Plaintiff thus desisted from her claim to buy the lot from the Rural Progress Administration so that defendant finally acquired title thereto. She also caused the surveying and segregation of that portion of the lot agreed to be sold to her, incurring expenses therefor. Moreover, she regularly paid for the stipulated rentals. But when she tendered payment of the purchase price, defendant, invoking the Statute of Frauds,[59] refused to accept it. Plaintiff claimed partial performance of the contract.

Held: American Jurisprudence, in its title "Statute of Frauds," lists several acts of partial performance, such as payment, possession, the making of improvements, relinquishments of rights, etc. It would appear that the complaint in this case described several circumstances indicating partial performance:

---

[54] Moncado v. People, 80 Phil. 1; 2 MORAN, COMMENTS ON THE RULES OF COURT 737-739.
[55] RULES OF COURT Rule 123, sec. 21; CIVIL CODE Art. 1403 (2).
[56] Almirol v. Monserrat, 48 Phil. 67 (1925); Arroyo v. Azur, 43 O.G. 54 (1947); *see also* Hernandez v. Andal, 78 Phil. 196 (1947); Pascual v. Realty Investment Co., G.R. No. L-4002, May 12, 1952.
[57] G.R. No. L-11811, May 28, 1958.
[58] G.R. No. L-11281, May 12, 1958.
[59] An agreement for the sale of real property or of an interest therein must be in writing to be enforceable. RULES OF COURT Rule 123, sec. 21(e); CIVIL CODE Art. 1403, 2(e).

relinquishment of rights, continued possession, tender of payment, plus surveying the lot at plaintiff's expense and the payment of rentals. Defendant maintains that neither of the circumstances of relinguishment, survey, and tender of payment, taken *separately* would constitute partial performance. Granting that none of these circumstances would *separately* suffice, still the *combination* of the three amounts to more than enough.

In the *Carbonnel* case, it appears that during the trial, plaintiff took the witness stand to prove, by parol evidence, her claim that the contract[60] between her and defendant, though oral, is partially executed and, therefore, removed from the purview of the Statute of Frauds. Defendant objected to the admission of this evidence. *Held:* For obvious reasons, it is not enough for a party to allege partial performance in order to hold that there has been such performance and to render a decision declaring that the Statute of Frauds is inapplicable. But neither is such party required to establish such partial performance by documentary proof before he could have the opportunity to introduce oral evidence on the transaction. Indeed, such oral testimony would usually be unnecessary if there were documents proving partial performance. The rejection of any and all testimonial evidence on partial performance would nullify the rule that the Statute of Frauds is inapplicable to contracts which have been partially executed.

RES INTER ALIOS ACTA

The rule that acts of parties do not bind or prejudice strangers to such acts is too well known in the law of evidence to require citation of authorities. The principle finds expression in the maxim: *res inter alios acta altire nocere non debit.*

In *El Hogar Filipino v. Angeles,*[61] it appears that since November 19, 1940 when Angeles' paid up shares matured she became a creditor of the El Hogar and consequently ceased to be a stockholder. Whatever obligations the officers of the corporation subsequently contracted can no longer bind her. "Hence," the Court concluded, "the acceptance by the El Hogar Filipino of the conditions imposed by the Central Bank requiring revaluation of its shares is not cbligatory on appellee, as she had ceased to be a stockholder since 1940. Unless she ratified that agreement, expressly or impliedly, the same must be regarded, as to her, *res inter alios acta.*"

And in the case of *Red Line Transportation Co., Inc. v. Abrazado,*[62] the oppositor contended that besides itself, there were six other operators on the route in question that judging from their declarations of gross receipts their trucks must have been running at one-fifth only of their passenger capacity, and that consequently there is no need to admit newcomers like applicant. The Court held:

> "Such six other oppositors have not opposed this application. On the other hand, considering the principle of *res inter alios acta*, it is quite doubtful whether those written declarations could, strictly speaking prejudice herein applicant who had nothing to do with their preparation."

CREDIBILITY OF WITNESSES

When confronted with the issue of credibility of witnesses, it has become almost axiomatic for the Supreme Court to dismiss such issue with this oft-

[60] Contract involves sale of real property.
[61] G.R. No. L-11613, Sept. 30, 1958.
[62] G.R. No. L-11411, Oct. 31, 1958.

repeated statment: The trial judge that saw the witnesses testify and had opportunity to observe their demeanor and manner of testifying is in a most preeminent position to gauge their credibility and, consequently, his findings of fact must not be disturbed.[63] But still there are those cases where the Court cannot help but give a second hard look on the question of credibility of witnesses, if only to avoid, or at least, minimize any miscarriage of justice. Such is the case when the record of a case shows that some facts or circumstances of weight or influence have been overlooked, or the significance of which has been misinterpreted by the lower court, or some conclusion established from the facts is inconsistent with those findings, or there is some inherent weakness in the evidence upon which the trial judge based his conclusion.[64]

Thus, it has been held that the inconsistencies committed by a witness on some minor or insignificant details are not sufficient to negative his testimony on the more material points;[65] and that the mere fact that a witness is an employee or overseer, or even a relative of a party, is not enough ground to discredit his testimony, especially when no motive for him to falsely testify can be shown.[66] But a defense of alibi is usually frowned upon and rejected when it is sought to be established solely on the testimony of the relatives or friends of the accuesd..[67]

In naturalization cases, the Court has consistently shown an uncompromising stand on the question of credibility. Invariably, doubts have been resolved strictly in favor of the state and against the applicant for naturalization. This attitude of the Court is very much appreciated, considering the policy of the law that an alien who seeks political rights as a member of a nation can rightfully obtain them only upon terms and conditions specified by Congress, and that it is not within the province of the courts to make bargains with him.[68]

The definition of a "credible person," in the context of the Naturalization Law[69] was set out in *Ong v. Republic*:[70]

> "A 'credible' person is to our mind, *not only* an individual who has not been previously convicted of a crime; who is not a police character and has no police record; who has not perjured in the past; or whose 'affidavit' or testimony is not incredible. What must be 'credible' is not the declaration made, but the *person* making it. This implies that such person must have a *good standing in the community;* that he is *known to be honest and upright;* that he is *reputed to be trustworthy and reliable;* and that his word may be taken on its face value, as a good warranty of the (character of the) petitioner."

To be considered "credible" the character witnesses presented by the applicant for naturalization must have also actual and personal knowledge of the latter's life so as to qualify them to testify on his moral character and conduct during the entire period of his stay in the Philippines.[71] Thus, in *Siong v. Republic*,[72] and *Young v. Republic*,[73] the character witnesses presented by applicants were declared incompetent for the lack of this requisite knowledge.

---

[63] People v. Colman, G.R. No. L-6652-54, Feb. 28, 1958; People v. Semañada, G.R. No. L-11361, May 26, 1958; People v. Rodriguez, et al., G.R. No. L-11498, May 30, 1958; Neam v. Republic, G.R. No. L-10559, May 16, 1958; Christensen v. Christensen, *supra*, note 52.

[64] Baltazar v. Alberto, 33 Phil. 336; People v. Borbano, 76 Phil. 702; People v. Colman, *supra*, note 63.

[65] People v. Majesterio, G.R. No. L-8731, Jan. 31, 1958.

[66] Santos v. Concepcion, G.R. No. L-11068, April 30, 1958; People v. Quitchon, et al., G.R. No. L-11109, June 30, 1958.

[67] People v. Arandia, G.R. No. L-11490, April 30, 1958.

[68] Ng v. Republic, 50 O.G. 1599.

[69] Sec. 7, C.A. No. 473.

[70] G.R. No. L-10642, May 30, 1958.

[71] Sy v. Republic, G.R. No. L-10472, Feb. 26, 1958.

[72] G.R. No. L-10200, April 18, 1958.

[73] G.R. No. L-11278, May 19, 1958.

In the *Siong* case, the applicant was born in Manila of Chinese parentage on August 22, 1922. De la Rosa, one of the two witnesses for him, stated in his affidavit and testified in open court that he came to know applicant only in 1940, when the latter was already 18 years of age. *Held:* As De la Rosa came to know applicant only in 1940, he could not testify that the latter conducted himself in a proper and irreproachable manner during his entire stay in the Philippines, which dates from his birth. Even admitting that he could have obtained information or knowledge of the previous conduct of applicant prior to actually meeting him, the record fails to disclose any testimony by him that applicant had conducted himself in a proper and irreproachable manner during the entire period of his stay in the Philippines.

Likewise, in the *Young* case, the Court did not hesitate to deny petitioner's application for naturalization because the testimony of his two character witnesses were found to be "vacillating, incomplete, unsatisfactory and is based on mere conjectures without sufficient grounds to support him. Their knowledge of petitioner is casual and not sufficient for a just valuation of the petitioner's character and real intention. Most of their statements are hearsay, being based on what petitioner told them."

The following circumstances, however, were held insufficient to disqualify a character witness:

(1) The mere fact that a witness has no personal knowledge of petitioner's activities in social circles and civic organizations as the Lion's Club, Jaycees, etc. and the latter's relation with the government.[14]

(2) The fact that a witness did not always see petitioner in his house whenever the former pay the latter's family a visit and that said witness did not know the Chinese name of petitioner's mother, nor that said petitioner had any sister or brother, for these are merely insignificant and unimportant to affect the witness' knowledge of the conduct and character of petitioner.[15]

In *Chiong v. Republic*,[16] one of the character witnesses was absent from the Philippines from 1948-1951, and thus it was claimed for the government that he did not and could not have had the opportunity to observe the conduct and character of petitioner during the entire period of his stay in the Philippines. *Held:* The Naturalization Law does not require that character witnesses must continuously be in the Philippines to observe the petitioner's conduct. It is not expressly required that a witness continuously see and observe an applicant in order to be competent to testify that during the applicant's period of stay in the Philippines, the latter acted in an irreproachable manner. Knowledge of the conduct and character of an applicant is not obtained by observation alone, the acts of a person ordinarily come to the knowledge of his acquaintances. Besides, character is something that develops in the community and is best evidenced by reputation.

EXPERT TESTIMONY

The probative value of expert testimony was the point at issue in the special proceedings: *In re Probate of the Will of Gabina Raquel.*[17] It appears that the proponent of the will presented evidence to the effect that after the will was read to the testatrix, she manifested conformity thereto and thumbmarked the foot of the document and the left margin of each page. She at-

[14] Neam v. Republic, G.R. No. L-10559, May 16, 1958.
[15] Te v. Republic, G.R. No. L-10805, April 23, 1958.
[16] G.R. No. L-10285, Feb. 28, 1958.
[17] G.R. No. L-10751, June 23, 1958.

tempted to sign with a fountain pen, but was only able to affix her signature at the end of the testamentary dispositions because immediately thereafter, she dropped the pen grasping her right shoulder and complaining of pain. After 20 minutes, Lourdes Samonte was instructed to write "Gabina Raquel by Lourdes Samonte" next to each thumbmark, and thereafter witnesses Lourdes Samonte, Felipa Samala and Modesta Gonzalez signed at the foot of the attestation clause and at the left margin of each page. The trial court refused to give credence to this testimony on the basis of the expert testimony presented by the oppositor.

> *Held*: "After careful consideration of the testimony on record, we are of the opinion that the facts adverted to by the expert for the contestant do not clearly support the conclusion drawn by him. Thus, his assertion that the fingerprints were affixed after writing the name of the testatrix appears to be an inference drawn from the fact that the ink of the writing failed to spread along the ridge lines of he fingerprints. This conclusion obviously failed to take into account the fact that the evidence is that some 10 or 20 minutes elapsed between the affixing of the fingerprints and the writing of the original signatures, due to the fact that they were not written until a long wait for the testatrix's attack of pain to subside. There was sufficient time for the fingerprints . . . to dry, and recognized authorities on the matter point out that 'ink lines over rubber stamps will spread out if the stamp is not dry' . . . and 'if the stamp's impression is allowed to dry thoroughly before the writing is written over it, the ink will not run out as it does on a damp ink line' . . ."
>
> "As to the alleged forging of Samonte's signature . . . the lighter shade of the underlying characters strongly indicates that the overwriting was made to correct ink failure or other imperfection in the first writing. . . . As to the alleged use of two different pens, (the expert's) conclusions are backed more by opinion than by facts, besides being contradicted by (another expert) and the proponent's other witnesses.
>
> "The basis for the conclusions of (the expert) who admitted having been engaged on a contingent basis, not being satisfactorily established and his testimony being contradicted by the two witnesses to the will and the expert for the (proponent), the lower court erred in considering that the preponderance of evidence lay with contestant's . . ."

JUDICIAL NOTICE

In the case of *J. M. Tuason & Co. v. Villanueva*,[78] the parcel of land in question was described as located in Caloocan and San Juan, Rizal, not in Tatalon, Quezon City where the land claimed by defendants was located. The Supreme Court in passing upon this contradictory description took judicial notice of the fact that Quezon City was carved out of several municipalities of the Province of Rizal, and among them are Caloocan and San Juan.

The Court also took judicial notice of the fact: (1) that Bacoor and Imus are contiguous towns connected by a first class road, and that Barrio Anabu and Imus are just by the roadside;[79] (2) that the distance between Japan and the Philippines is roughly 2,875 nautical miles and the ordinary velocity of passenger vessels like SS "President Jefferson" is around 20 knots or 480 nautical miles per day. So that under ordinary circumstances a vessel that left Japan on July 7, 1952 must have arrived in the Philippines on or about July 17, 1952;[80] (3) that Huks had always tried to be in good terms with the people provided they do not spy on them or do not cause them trouble; and on the other hand, they ordered the killing of those who spied on them or who reported them to the authorities;[81] and (4) that depressions on the occipital region of the head indicate fractures in the cranium which, at least, requires medical treatment for more than 90 days.[82]

---

[78] *Supra*, note 4.
[79] People v. Caminero, et al., G.R. No. L-8705, May 26, 1958.
[80] Lin Fire & Marine Ins. Co. v. American President Lines, G.R. No. L-11081, April 30, 1958.
[81] *Supra*, note 37.
[82] *Supra*, note 48.

CONSPIRACY, HOW PROVED

Quoting with approval Underhill's *Criminal Evidence* (p. 795), the Supreme Court in *People v. Colman, et al.*,[83] laid down the following rule of proving conspiracy:

> "If it is proved that two or more persons aimed . . . their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proved. . . . The details of the conspiracy need not be proved. If a community of purpose among the parties to do some criminal act or acts is shown, it is not necessary that the act which are charged or of which evidence has been given, were specifically contemplated by them or included in the original design."

In *People v. Quiosay, et al.*,[84] where it was shown that while the deceased was being chased by Mauricio Quiosay, appellant Romeo Quiosay blocked the deceased's way and struck him with a bolo, and after this appellant immediately ran away so that when Mauricio cut off the head of the deceased he was no longer present, the Supreme Court *held*: The mere act of the appellant in striking the deceased once cannot conclusively prove conspiracy. But in the case of *People v. Guerrero, et al.*,[85] it was ruled that there was conspiracy among the accused, the Court saying:

> "We take judicial notice of the well-known practice of Huks to kill people spying on them (the deceased was suspected as a spy) as a necessary means to protect their organization. We can therefore, assume that Ebid, as a member, was agreeable to such practice and adhered thereto. As a member of the Huk band, it was his duty to eliminate spies and to destroy all those who hamper their activities. As he showed no signs that he did actually object to the detention and killing or refused to take part therein, he is presumed to have agreed or conformed to the killing . . . and be jointly responsible therefor with the other members of the band."

ALIBI

Time and again, our Supreme Court has made it clear that alibi is one of the weakest defenses in criminal prosecutions in instances where the accused has been positively identified by eyewitnesses. Time and again, defendants have, nevertheless, raised alibi in a desperate bid for liberty. Thus, in *People v. Masilungan*,[86] defendant appealed from the judgment of the lower court finding him guilty of kidnapping. The main defense was alibi. Justice Endencia, speaking for the Court, declared:

> "We have time and again held that alibi is the weakest defense that an accused can avail of, and oral proof thereof must be clearly and satisfactorily established because it is so easily manufactured and usually so unreliable that it cannot be given credit." [87]

The Court gave characteristic proof which may tip the scales in favor of the defense of alibi, as follows:

> "Oral proof to establish and support an alibi must not be loose, vague and doubtful as in this case, but firm, consistent and trustworthy that when hurled against the evidence for the prosecution the impact must perforce overwhelm the latter. In other words, such proof must not leave any room for doubting its accuracy, plausibility and verity.

---

[83] *Supra*, note 68.
[84] G.R. No. L-10852, May 28, 1958.
[85] *Supra*, note 37.
[86] G.R. No. L-9783, Sept. 30, 1958.
[87] People v. Badilla, et al., 48 Phil. 710; People v. Moro Sarabi, et al., G.R. No. L-8054, Sept. 21, 1956; People v. Caminero, *supra*, note 79.

> Certainly we cannot give any credit to the testimony of appellant and his witnesses Daniel Larosa as to the date of appellant's arrival in Mindoro, for the fixing thereof is merely the result of guesswork."

In *People v. Alfiler, et al.*,[88] the Court, also held untenable accused's defense of alibi, he having been fully identified. His tender defense was characterized by the Court as an eleventh-hour concoction, considering that aside from the direct testimony of prosecution witnesses as to the identity of the accused, his footprints and drops of blood also corroborated the rest of the evidence pointing to his guilt. Of like import was the ruling of the Court in *People v. Moro Ali, et al.*,[89] where conviction of accused for the offense of robbery in band with physical injuries was sustained on appeal on the ground that the defense of alibi melted into the unbelievable before the testimony of prosecution witnesses identifying accused as a frequent customer at the store where the robbery was perpetrated.

Again, in *People v. Gardon, et al.*,[90] appellant's defense of alibi was not sustained because according to the Court, "the claim of alibi of appellants Gardon and Altis is too weak to merit consideration. The same is belied not only by their own written confessions wherein they pointed out their participation, but by the testimony of Conchita Fungo, co owner of the store where the robbery was committed, and of Antonio Rodrigo, a co-accused utilized as a state witness which clearly established that the two took part in the commission of the crime. The finding of several firearms in the house of appellant Gardon, some of which were used in the robbery, is another proof of his guilt."

And in the case of *People v. Briz, et al.*,[91] the finding of guilt of the accused was sustained and his defense of alibi was not given any weight because accused was identified by eyewitnesses as with the group who authored the crime, and he was seen hurrying from the scene of the outrage. Said the Court: "It is a well known rule that a defense of alibi cannot be given credence when the identity of the accused is established by evidence which leaves no doubt as to his guilt."

Adding further weight to the long train of jurisprudence on the weakness of alibi as a defense, the Supreme Court explained why appellant's theory could not be given credence and expressed itself in *People v. Felicisimo Aquipo*,[92] as follows:

> "Against the positive indentification of the appellant made by the witnesses Froilan Yapes, who stated that he focused his flashlight on appellant's face when the latter called on him at his house, and Eufracia Nolasco, Melchor Cormero, and the offended parties, Olimpia Yepes and Papiniara Udtohan, who all testified that they saw appellant's face clearly when he sat down by the table on which was a lighted kerosene lamp, the defense of alibi cannot be given much weight. Olimpia knew the appellant as a relative of her late husband and as her former classmate in the third grade. Papinian Udtohan knew him as a policeman of Tanauan, and often saw him in town where she went to school."

Proof of the full identification of the accused was the testimony of the offended party: "He held her neck and pushed her to the ground. Probably sensing a dark motive of the appellant, she begged him to spare her and not to abuse her, reminding him that he is still a relative of her late husband . . ."

To support accused's defense of alibi in the *Aquipo* case, the police detail, guard report, and the testimony of several witnesses were offered in evidence. The Court attached little weight to this evidence, saying:

---

[88] G.R. No. L-10445, Aug. 29, 1958.
[89] G.R. No. L-7481, May 30, 1958.
[90] G.R. No. L-11004, Aug. 25, 1958.
[91] G.R. No. L-11068, ARug. 28, 1958.
[92] *Supra*, note 9.

> "It is well known that the defense of alibi is easily manufactured and usually so unreliable that it is rarely given credence." [93]
>
> "Aforestated exhibits were patently eleventh-hour proofs, prepared *ad hoc* by police officers of Tanauan to help their subordinate Aquipo and save him from the weight of the law . . ."

The above rulings were reiterated in several other cases.[94]

FORGOTTEN EVIDENCE

The respondents in *Madrigal Shipping Co., Inc. v. Ogilvie, et al.*,[95] brought suit for the collection of salary and subsistence allowance for services rendered while on board vessel "SS Bridge", allegedly owned by petitioner Ship ping Co., Inc. The defense interposed was that it was not a corporation organized according to law, hence it had no juridical personality amendable to suit. Plaintiffs presented evidence to prove that it was organized corporation. The lower court did not, however, consider this evidence. The Supreme Court reversed the ruling of the court *a quo* and held:

> "Moreover, the trial court committed an error when it refused to take into account the evidence presented by the respondents to prove that the petitioner was a corporation duly organized and existing under the laws of the Philippines, the documents showing that fact having been reconstituted only after the first hearing of the case, upon the sole ground that it was not new but forgotten evidence. Such ground could be relied upon to deny a motion for new trial, but not after the motion had been granted, for official or public documents presented to show or prove the juridicial personality or entity of a party to an action not known or available at the first hearing could not be ignored. The trial court could not close its eyes to reality."

DISPUTABLE PRESUMPTIONS

That official duty has been regularly performed is one of the disputable presumptions recognized by the law of evidence.[96] Thus it has been held that unless the contrary is shown, a cadastral clerk of court is presumed to have notified all the parties of the court's decision;[97] and an accused is presumed to have been duly arraigned before trial.[98]

People v. Arandia,[99] involves the presumption regarding wilfully suppressed evidence.[100] Here, the defense made an attempt to impeach the testimony of the prosecution witnesses—widow and daughter of the deceased—by presenting one Damian Añover, a municipal councilor who testified that when he went to investigate the incident, said witnesses told him that they did not recognize the assailants. *Held:* One can hardly give credence to Añover, considering the conduct he has observed during the investigation of the incident. It appears that after the alleged inquiry made by him, an investigation was made by the local authorities and in spite of the fact that all this was known to him, Añover did not extend any help to the authorities nor did he inform them of the alleged admission made by the widow and daughter of the deceased.

---

[93] People v. Umali, G.R. No. L-8866-70, Jan. 28, 1957; People v. Monodi et al., G.R. No. L-8770-71, Sept. 27, 1955; People v. Gagomas, G.R. No. L-4072, Sept. 22, 1952; People v. Rama, G.R. No. L-2171, 47 O.G. 9, 4571.

[94] People v. Majesterio, *supra*, note 65; People v. Colman, *supra*, note 87; People v. Arandia, *supra*, note 67; People v. Andam, G.R. No. L-11383, April 30, 1958; People v. Bugagao, G.R. No. L-11328, April 16, 1958; People v. Remo, *supra*, note 84; People v. Mangalus, G.R. No. L-10982, may 9, 1958; People v. Caminero, et al., *supra*. note 79: People v. Paunil, G.R. No. L-9328, May 28, 1958: People v. Rodrigues, *supra*. note 17; People v. Quiatchon, et al., G.R. No. L-11109, June 30, 1958.

[95] G.R. No. L-8481. Oct. 30, 1958.

[96] RULES OF COURT Rule 123, sec. 69(m).

[97] Director of Lands v. Centino, G.R. No. L-11264, Feb. 10, 1958.

[98] People v. Colman, *supra*, note 68.

[99] *Supra*, note 67.

[100] RULES OF COURT Rule 123, sec. 69(e).

It was only at the trial that he revealed the supposed admission. This conduct is suspicious and cannot but reflect upon the credibility of the witness.

BURDEN OF PROOF

In *David v. De la Cruz*,[101] respondents De la Cruz and Coloma filed an action against their landlord Maria David for reinstatement, alleging that the latter ejected them from their landholdings without just and lawful cause. In the same complaint, they included a claim for damages. The Court of Agrarian Relations rendered judgment ordering the reinstatement of respondents and reserving to them the right to file a new action for the recovery of the losses and damages they suffered because of the unlawful ejectment as the "evidence on record does not contain enough data upon which to base a fair adjudication of the damages."

Held: Having included in their complaint not only a claim for reinstatement but also a claim for damages, respondents had the burden or duty of proving both claims satisfactorily. In view of their failure to establish their claim for damages, such claim should have been unqualifiedly dismissed.

In *Teodoro v. Sabala*,[102] it was held that in an action for the recovery of property the *onus probandi* falls on the plaintiff, inasmuch as "every person in possession of a thing under a claim of ownership has in his favor the legal presumption that he possesses under a just title . . ."

MEANING OF SUBSTANTIAL EVIDENCE

The Supreme Court in *United States Lines, et al. v. Associated Watchmen and Security Union (PTWO)*,[103] quoted with approval the following definition of "substantial evidence" as the term is used in the Magna Charta of Labor.[104]

> ". . . 'substantial evidence' is more than scintilla, and must do more than create a suspicion of the existence of the fact to be established. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . . (it means) evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can reasonably be inferred." [105]

WEIGHT OF EVIDENCE

Evidence may satisfy the requirements for admissibility, but it may not be entitled to great weight. As to the degree of probative weight of gross receipts, the Supreme Court in *Red Line Transportation Co., Inc. v. Abrazado*,[106] held as follows in denying oppositor's claim:

> "Besides, they (gross recipients) were not under oath. And there is much to what respondent says that such declarations cannot be considered safe and true index of the volume of passengers for a given quarter of the year 1955, because most of these operators, for purposes of their own, do not make true entry in their books of account of the actual passengers carried during a given period of time. Perhaps they want to evade the heavy taxes they are expected to pay if they make a truthful entry in their books."

But in *Batangas Transportation Co. v. Graciano Reyes*,[107] the Court considered the reports of bus inspectors as entitled to great weight. This case was

---

[101] G.R. No. L-11656, April 16, 1958.
[102] G.R. No. L-11522, Jan. 31, 1958.
[103] G.R. No. L-12208-11, May 21, 1958.
[104] Sec. 6, Rep. Act No. 875.
[105] NLRB v. Columbian Enameling & Stamping Co., 306 U.S. 292.
[106] G.R. No. L-11411, Oct. 31, 1958.
[107] *Supra*, note 2.

brought to review the decision of the Public Service Commission, granting Graciano Reyes, applicant, certificate of public convenience for the transportation of passengers and frieght between Batangas and Balayan. The Commission relied mainly on the testimony of applicant's witnesses who testified to the inadequate facilities of the oppositor on the aforestated route, giving less credence to reports of oppositor's inspectors. The Supreme Court held:

> "But if the reports are taken into consideration, said testimonies of the applicant and his witnesses would be completely discredited, because the reports are more reliable because they are documentary, and because the facts stated therein have been taken by persons performing their ordinary functions in the ordinary course of business.
>
> "No argument is needed to show that the testimonies of the inspectors of the oppositor, supported by their daily report of passengers have greater weight than those of applicant and his witnesses. The inspectors of the oppositor have the duty to check on the passengers actually riding on the buses, day in and day out. They were in a better position, therefore, to tell the passenger loads of the buses, as against the applicant and his witnesses who only see the buses when they occasionally ride or try to ride on them."

With respect to the findings of the agent of the Commission itself, which was not given great weight by the Commission, the Court had this to say:

> "We also find that the majority members of the Commission incorrectly discarded the findings of its employee, Agent Juan Manlapaz, who was stationed to check the volume of passengers riding between Lemery and Lipa. In view of the conflicting testimonies of witnesses for both parties, it is very necessary to consider the report of the agent of the Commission as a part of the observations and investigations of the Commission itself, and such report should be given more credence than the oral testimonies of witnesses for the applicant." [108]

The Court concluded that for the above reasons it is difficult for it to believe that the evidence show lack of necessity of additional buses. In this case, the Court also noted in passing that the inspector's reports cannot be considered self-serving evidence because they (reports) were taken by the employees of the oppositor company in the course of business and in the ordinary routinary duty on their part, and they are presumed to be correct.

In criminal prosecutions, even an appellate court can glean from the testimony of witnesses if at all credibility can be attached to their testimony. In *People v. Frigillana*,[109] the Court observed as follows:

> "The only other direct evidence on the identity of the assailant is the testimony of the widow Cristina Doctolero that she recognized the appellant Frigillana, because after shooting and hitting her three times, he strode into the room to where she lay, close by a lighted oil lamp, twisted her neck and hammered her head thrice with the butt of his gun.
>
> "This testimony strikes us as unworthy of belief; why should a murderer who has chosen the dark of night for his foul deed suddenly abandon all secrecy and approach a lighted lamp to batter his victim into insensibility instead of ensuring her silence by a mortal shot "

In *People v. Francisco, et al.*,[110] the Supreme Court acquitted one of the accused because according to it:

> "If Robles was really one of the conspirators and he was making preparations for the commission of the crime to be staged a few hours later, by getting more ammunition for his revolver, it was not likely that he would tell anyone about said bullets, much less to a peace officer of the very locality where the robbery was to be committed, and in the presence of another peace officer, Corporal Constantino, and not in a whisper, to

[108] Buan v. PAMBUSCO, G.R. Nos. L-7996-99, May 31, 1956.
[109] *Supra*, note 80.
[110] G. R. No. L-10397, Oct. 16, 1958.

> keep it a secret, but in a loud voice, for the other bus passengers to hear. Criminals about to perpetrate a crime, involving the use of a gun do not usually act in this manner."

The case of *Collector v. Reyes*,[111] involved the weight to be given to books and records of accounts. Here it appears that on October 13, 1954, upon conclusion of his investigation, the Collector of Internal Revenue, issued a deficiency assessment on Reyes in the total sum of ₱641,470.04 as deficiency income tax for the years 1946-1950. The Collector used the inventory or net worth method. Reyes contended, *inter alia*, that it was incumbent upon the Collector, under the method used, to prove that taxpayer's books do not reflect his correct income. The Court refused to adopt his contention, holding:

> "We are with the Solicitor General that this claim is not tenable. The taxpayer cannot expect the tax authorities to depend upon his account books and records when he has himself introduced evidence of their unreliability, as hitherto observed. Books of account do not prove *per se* that they are veracious; in fact they may be more consistent than truthful."

And in *Heirs of Pabores v. The Commissioner, et al.*,[112] it appears that a claim for compensation for the death of Patricio Pabores, employee of Union Construction Co., Inc. was filed. One of the issues was: which has greater weight, testimony or declaration of Patricio to physician that he fell from scaffolding, or the conjectures of witnesses of the employer? The Court readily held that the former should be accorded a controlling weight because in the language of the Court:

> "No one actually saw the accident, except the deceased. Deceased had no reason to state a falsehood; this must prevail over the report of investigators based on mere conjectures and assumptions."

On the question of whether a memorandum is evidence, the Court also in this case held:

> "It must be remembered that a memorandum is but a note to help the memory, the object of which frequently is to help the memory of another person other than the writer thereof.[113] Memorandum is not evidence and the court or body to whom a memorandum is directed may or may not consider the same."

One of the issues raised in *Republic v. Garcellano, et al.*,[114] is the right of Santaromana to be awarded consequential damages for the remaining areas of her lands excluded by the expropriation which were allegedly rendered completely useless by the condemnation of the greater portions thereof. *Held:*

> "The commissioners who viewed the lands in question and appraised their values recommended the payment of consequential damages to some defendants, the unexpropriated portions of whose lands were found too small for profitable use. No such recommendation was made in appellant Santaromana's favor, the excluded portions of her lands having been found to be among those which suffered no consequential damages. . . . Appellant did not present any evidence to overcome or show any error in this recommendation. Upon the other hand, we have held in previous cases[115] that the report and recommendation of the Commissioners who had the opportunity to view the premises and determine the extent to which remaining portions of expropriated lands have been damaged, are entitled to great weight."

---

[111] G.R. Nos. L-11534, 11558, Nov. 25, 1958.
[112] G. R. No. L-12034, Aug. 30, 1958.
[113] Bissel v. Backwith, 32 Conn. 509; 27 WORDS AND PHRASES 29.
[114] G.R. Nos. L-9556, 12630, March 29, 1958.
[115] Republic v. Lara, *et al.*, 50 O.G. 12, 5778; Republic v. Narciso, G.R. No. L-6594, May 18, 1956.

FINALITY OF ADMINISTRATIVE DECISIONS ON QUESTIONS OF FACT

The findings of fact by administrative bodies are often given conclusive effect. Thus, a decision rendered by the Director of Lands and approved by the Secretary of Agriculture and Natural Resources, upon a question of fact has been held to be conclusive and not subject to judicial review, in the absence of a showing that such decision was rendered in consequence of a fraud, imposition, or mistake, other than error of judgment in estimating the value or effect of evidence, regardless of whether or not it is consistent with the preponderance of evidence, so long as there are some evidence upon which the findings could be made.[116]

[116] Guzman v. Guzman, G.R. No. L-11627, June 25, 1958.