EVIDENCE

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"Evidence without argument, is worth more than argument without evidence. In their union, they are irresistible."—*David Paul Brown*

INTRODUCTION

Cases of 1961 vintage decided by our Supreme Court show that the court of final conjecture has not departed from its settled rulings in the past. Indeed a precedent embalms a principle.

There is marked dearth of cases on evidence decided by the Supreme Court in the year 1961. Perhaps this is due largely to two factors; namely: The highest court's seemingly reluctant attitude to review factual findings of the inferior courts which are generally accepted to be most competent in this endeavor and that the Judiciary Act of 1948 as amended limits the Supreme Court's authority to take cognizance of issues of facts to cases specified therein, e.g. capital offenses, civil cases involving an amount exceeding five hundred thousand pesos, etc.

However, it is noted that the Court has elucidated on the twilight zones of the past rulings and has amplified these ambiguities with sufficient clarity.

ADMISSIBILITY OF EVIDENCE

The cardinal principle governing the reception of evidence in the court of justice is found in Rule 123, Section 3 of the Rules of Court. It provides that "Evidence is admissible when it is relevant to the issue and is not excluded by this rule."

Anchored on this rule, the following cases were adjudicated.

A. Best Evidence Rule

It reads: "There can be no evidence of a writing other than the writing itself the content of which is the subject of inquiry, except in the following cases: x"[1] In the case of *Pornellosa v. L.T.A.*[2] the Court rejected the petitioners' claim over a certain par-

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** Member, Student Editorial Board, *Phil. Law Journal*, 1961-62.
[1] Rules of Court, (Phil.) Rule 123, section 46
[2] G.R. No. L-14040, Jan. 31, 1961.

cel of land on the ground that they failed affirmatively to prove that the claimed parcel is included in the deed of sale which did not contain a description of the lot or of the boundary. The Court stated that "the petitioners have not presented any document or evidence showing that the defunct Rural Progress Administration had agreed to sell to them the residential lot." Similarly in granting damages arising from delay in violation of the terms of the contract, the Court in the case of *Basilan Lumber Co. v. Cagayan Lumber Co.*[3] admitted the contract to prove the terms thereof along with the receipts that had been issued in the course of the transaction.

Contrary to the above rulings, the same Court in the case of *Herrera v. Kim Guan*[4] overruled the petitioner's claim for nullification of the perfected contract of sale on the ground that as between her own testimony and that of her husband contending that it was a lease versus the evidence of certification signed by the Register of Deeds, attesting the genuineness of the deed of sale over the same land, dated Dec. 1, 1931 executed by Herrera in favor of Guan and registered in the primary book, the latter documentary evidence being an exception to the best evidence rule must prevail.

Reiterating the Best Evidence Rule the Court in *Ty v. First National Surety and Assurance Co.*[5], held that the insured who merely suffered physical injuries in the left hand could not recover under the insurance policy's provision "the loss of a hand shall mean the loss by amputation through the bones of the wrist." The Court emphasized that the agreement was clear and it served as the law between the parties. In the same breadth the Court in the case of *Dizon v. Arrastia*[6] where the mortgagor after stipulating that the loan would become due and demandable after October 23, 1947 and expressly waiving the right to pay the loan before the said date. sought the court's approval of his early payment in October 9, 1944, ruled that the terms of the contract is clear and it's fatal to his case. The contracting parties are free to stipulate on the special condition governing their respective obligation. Specifically the mortgagee could not demand payment any time after the date while the mortgagor had no right to discharge the obligation before the date without the consent of the mortgagee.

In conformity to the above ruling in *Salao vda. de Santos v. Barrera,*[7] the Court ruled that the plaintiff employer is entitled to the refund of ₱390.50 paid by her in the procurement of three house

[3] G.R. No. L-15908, June 30, 1961.
[4] G.R. No. L-17048, Jan. 31, 1961.
[5] G.R. No. L-16138-48, Jan. 31, 1961.
[6] G.R. No. L-15383, Nov. 29, 1961.
[7] G.R. No. L-16492, October 27, 1961.

maids from the defendant's Gloria Employment Agency. It based its award as per the clear provision to wit: "in case where an employee placed by the agency, terminates the contract of employment without having been dismissed by the employer and exchange is not made by the employer to the agency was rejected since the contract However, the collection of the personal debts of the house maids made by the employer to the agency was rejected since the contract expressly excludes the personal liability of the servant employee from their assumed responsibility to the employer.

B. Deposition

A question of the validity of a contract executed by virtue of a power of attorney was raised in the case of *Josefita vda. de Lacson v. S. Granada.*[8] In holding that the contract was authorized by the power of attorney the Court admitted the deposition of the attorney in fact to the effect that: "x x x as declared by Ricardo Lacson himself, the special power of attorney was signed by Josefita vda. de Lacson to enable him (Ricardo) to act in her stead in the reconveyance of the property to Granada." The Court continued that, "it cannot be pretended that Josefita did not know of the stipulated repurchase price of only ₱60,000.00."

C. Real Evidence

The issue of whether an object may be taken to court as part of the proof in a given case is treated in section 76 of the Rules of Court which states: "Whenever an object has such a relation to the fact in dispute as to afford reasonable grounds of belief respecting it, such object may be exhibited to or viewed by the court, or its existence, situation, or character proved by witnesses, as the court in its discretion may determine."

Construing the import of this rule the Supreme Court in the case of *People v. Galbon Ijad*[9] convicted the defendants for the crime of robbery in band with multiple homicide taking into account as part of the evidence supporting conviction two moro pants, two moro blankets, one dress and the scabbard of the 'barong' used in the killing. In the words of the Court these "are strong evidence of his guilt." The case of *Sari Yoko Co. v. Kee Bok et al.*[10] involved the infringement of the trademark 'Race Brand' owned by the plaintiff and registered in Tokyo. In holding against the defendants the Court considered heavily the original fascimile of the trademark used by the defendants. A meticulous examination showed that the

[8] G.R. No. L-12035, March 29, 1961.
[9] G.R. No. L-14456, Oct. 31, 1961.
[10] G.R. No. L-14086, Jan. 20, 1961.

pasted sheats covered among others the following words: "made in occupied Japan" the same label used by the plaintiff. The real evidence constituted the conclusive proof that the trademark applied for is the very trademark on manufactured goods made in Japan and imported to the Philippines.

The probative value of the demonstrative evidence was passed upon by the Court in *Pellota vda. de Imperial v. Heald Lumber Co.*[11] It appears that as a result of a helicopter crash in Mankayan, Mountain Province the husband of the plaintiff perished. She instituted an action to recover damages, based on the theory that the helicopter had collided with the defendant's tramway steel cables strung in the logging area. The Court in dismissing their claim ruled that the theory is untenable considering that the main rotor blade was not preserved so that the court was not able to satisfy itself as to the nature of the two long seriated streaks on the main rotor blade. The composition of this streak was not determined whether they were greased from the steel cable or marked from the hitting on the fine tree. The Court attributed the crash to the negligence of the pilot and the lack of fuel.

D. Hearsay Evidence

An effective deterrent against the fabrication of testimonies in court is afforded by the hearsay rule. Under the above rule a person assuming he has the legal fitness to be a witness, can only state what he has seen, heard or otherwise perceived.[12] The reason behind the proscription is the lack of an opportunity to cross examine the source of the testimony. In short the test for the hearsay evidence is the presence or absence of confrontation.

Applying the rule, the Court in *Ong v. Republic* [13] dismissed the petitioner's application for Philippine citizenship on the ground that he was unable to prove that he is engaged in a lucrative trade or profession. The Court disregarded the unsworn statement of his sister to the effect that he is actually receiving a salary of ₱130.00 a month. Besides being flimsy and unbelievable, it is a patent violation of the hearsay rule, not being subjected to the test of cross-examination. To the same effect the Court dismissed the citizenship application of Tan where the father of the applicant executed an unsworn certification as to sufficiency of his income.[14] The Court had another occasion to discuss the hearsay rule in the case of *Atlantic Gulf v. CIR.*[15] On the question of whether the dismissed em-

[11] G.R. No. L-14088, Sept. 30, 1961.
[12] SALONGA, J. PHILIPPINE LAW ON EVIDENCE, second edition (1958), p. 427.
[13] G.R. No. L-15764, May 19, 1961.
[14] Tan v. Republic, G.R. No. L-14860, May 30, 1961.
[15] G.R. No. L-16992, Dec. 23, 1961.

ployee really stole the brushes, the employer attempted to establish the theft by presenting Tongson a security guard who not having seen the actual occurrence declared that he had a conversation with another employee who pointed to the dismissed employee as the theft. The Court discarded his testimony since it infringed the hearsay rule. In the case of *People v. Moro Amajul et al.*,[16] involving a prosecution for robbery with murder, the Court discarded the hearsay evidence consisting of sworn statement of witnesses not called to the witness stand but whose statements were offered by the fiscal against Moro Asakil.

An evidence may have the earmarks of hearsay but the same may be admitted if not objected to by the opposing party. The admission is grounded on the theory that a penalty for lack of vigilance should be imposed by admitting the evidence. The Court had one occasion to apply the above doctrine in the case of *Petition of Adrian Fong v. Republic*,[17] where an affidavit stating that Fong had bought residential lot in violation of the law was admitted by the Court without having the affiant in Court. The Court said, "Instead of choosing to disregard the said affidavit by insisting on its rejection as hearsay, the applicant's counsel directed question to his witness regarding the said affidavit thereby impliedly admitting its competence.

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.[18] Confessions may either be judicial or extra-judicial. Judicial confessions are those made in conformity to law before the trial court in the course of legal proceeding, such as plea of guilt. Extra-judicial confessions are those made in a prior trial, in the preliminary investigation or out of court to any person.[19]

The use of these confessions is illustrated in numerous cases. The settled doctrine is that extra-judicial confession corroborated by the circumstances and by corpus delecti is sufficient to sustain conviction. Hence in the case of *People v. Lao et al*[20] a prosecution for kidnapping with murder, Padiamat was convicted on the basis of his extra-judicial confession describing the conspiracy to commit crime. His claim that he was coerced to make the confession losses weight considering the fact that no satisfactory evidence was introduced to establish the contention. The rule in this jurisdiction is

[16] G.R. No. L-14267, Feb. 28, 1961.
[17] G.R. No. L-15991, May 30, 1961.
[18] Rules of Court, Rule 123, Section 14.
[19] Salonga, J. *supra*, pp. 199-200
[20] G.R. No. L-10473, Jan. 28, 1961.

that confession is admissible without previous proof of its voluntariness on the theory that such confession is presumed to be voluntary until the contrary is proved.

The case of *People v. Mangahas* [21] reiterated this doctrine. A prosecution for parricide the defendant Mangahas after being arrested and in the municipal building voluntarily signed a confession admitting the crime which he later swore as a free act before the J.P. and entered a plea of guilt. The subsequent withdrawal of the confession did not affect its persuasive weight since the confession was never proved to be coerced nor made due to promises or expected reward. To impeach the probative value of the confession by proof of involuntariness through promise of leniency, the promise must be made from authorities who can make good the promise or reward. Thus in *People v. Pampilo de Torres* [22] a prosecution for murder, the confession made by the defendant and confirmed in Court was held to be sufficient and was not impeached by the alleged improper inducement by promise of reward or leniency since the promise was not made by the prosecuting officer or a court official.

The above rule was similarly applied in the case of *Natividad v. C.A.*[23] A prosecution for theft of electric current where the defendant was convicted upon his confession executed in the police department acknowledging the crime. In *People v. Amajul* [24] the extrajudicial confessions of Djalalong and Madjid were held by the court to be sufficient bases for their conviction. This is strengthened by the fact that they were identified. The voluntary nature of the extrajudicial confession can be gathered from a careful perusal of the circumstances surrounding its execution. Consequently in *People v. Obaldo* [25] the confession was held to be spontaneous and free considering the fact that it was read to him before he signed the same and he even conferred with his wife about it. The fact that he did not report at once to any authority of the alleged abuse committed proved prejudicial to his claim. His name being printed in duffle bag where the victim was found corroborated his confession. In this case the defendant though guilty of double crime of rape and murder was only convicted of murder since the court did not acquire jurisdiction to try the crime of rape for the parents of the victim failed to sign the complaint.

Extra-judicial confessions separately made when corroborating each other in material detail there being no proof of collusion become

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[21] G.R. No. L-13982, Jan. 28, 1961
[22] G.R. No. L-11815, Jan. 31, 1961.
[23] G.R. No. L-14827, Jan. 31, 1961.
[24] *Supra*, note 16.
[25] G.R. No. L-13976, April 29, 1961.

more credible. This was the ruling in the case of *People v. Racca*[26] a prosecution for murder, where the several confirmatory confessions reflected the truth because of their spontaneity and coherence. The fact that the judge asked them in Ilocano as to whether they were maltreated or not, to which they answered 'no', negatives their claim of coercion. The reason behind the Court's giving much weight to extra-judicial confession voluntarily made was stressed in *People v. Tengyao.*[27] The Court said, "His story before Sergeant Cabigas and his confession before the J.P. are more credible than his testimony in the witness stand, for the former was related when the accused had no chance to concoct or weave a fanciful yarn. His statements then were spontaneous and made when he had as yet no opportunity to talk to anyone who may be interested in his acquittal."

Along the same line the Court in *People v. Benito Cruz*[28] a prosecution for rebellion with robbery and homicide, ruled that the confession admitting the membership in the HUK movement after their arrest is conclusive of their guilt. The Court considered the following matters: (a) in claiming duress they failed to identify the soldiers who maltreated them, (b) they showed no signs of maltreatment, (c) the placing of the tag on a corpse which reads, *'ako ang pumatay, Commander Caviteño,* and his subsequent admission of being said Commander.

Closely parallel to the holdings of the Court in the above cases, a conviction of robbery in band with murder was sustained in the case of *People v. Galbon Ijad*[29] on the strength of the two defendants' confessions. The court ruled out the contention that their confessions were tainted with force and intimidation. The Court relied upon the testimony of the P.C. Commandant of Zamboanga who denied that the confessions were extracted through force. The J.P. before whom the written statements were signed likewise testified that he had informed the defendant of their constitutional right against self-incrimination and that he had ascertained that at the time of the signing no constabulary officer was present. The Court said, "Captain Santos and Judge Pingan appeared to be disinterested persons and neither bears the defendant ill-will nor harbor any personal motive that would prompt them to testify falsely against the defendants and jeopardize their lives and liberty". The free and voluntary confession was also borne out of the fact that the defendants did not tell their lawyer anything about the alleged maltreatment.

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[26] G.R. No. L-15812, Dec. 30, 1961.
[27] G.R. No. L-14675, Nov. 16, 1961.
[28] G.R. No. L-11870. Oct. 16, 1061.
[29] *Supra,* note 9.

In another case [30] the Court in dismissing the defendants' claim that there was collusion in the confession of the two co-accused, held: "The record discloses that when the said defendant made their respective confession they were separated from each other and could not have entered into any collusion with respect to their statements. Their confessions appeared to be almost identical in all material respects and may rightly be considered confirmatory of the testimony of the prosecution witnesses mentioned heretofore."

F. Admissions

An admission may be defined as a voluntary acknowledgment, confession or assent of the existence of certain relevant facts by a party to the action or by another by whose acknowledgment he is legally bound. The acknowledgment may be written, oral or by conduct.[31] There is a presumption that every sane man will so act as to protect his own interest and so if he shall, by word or conduct, declare anything inconsistent with a claim or defense he now puts up, it may be given in evidence against him.[32]

a) Admission by silence

The failure to deny a statement in ones presence and their surrounding which prompt to speech if the statements were false, is some evidence of acquiesence in the truth of the assertion.[33] The principle is well illustrated in the case of *People v. Amajul* [34] where the extra-judicial confession of Moro Djalalong pointing to Moro Jahud as a co-perpetrator, which was taken down in writing in the latter's presence to which he neither remonstrated nor protested was taken as an evidence of his guilt.

b) Admission by Conduct; Offer of Compromise

In criminal cases the settled rule in this jurisdiction is that in cases which are not allowed by law to be compromised an offer of compromise by the accused may be received in evidence as an implied admission of guilt. Illustrative of this rule is the decision in the case of *People v. Fatelvero* [35] a prosecution for murder where the circumstance that the defendant on one or more occasions in the trial court had offered to plead guilty to the lesser crime of homicide was understood by the court as an implied admission of the crime of homicide. Another case on the same point is the case of *People v. Obaldo* [36] a prosecution for the complex crime of rape with murder.

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[30] People v. Saez, G.R. No. L-15776, March 29, 1961.
[31] Salonga, *supra*, p. 93
[32] Wigmore, John, h. Student's Textbook on the law of Evidence (1935), section 180.
[33] Ollert v. Ziebel, 114 A 246, 96 N J L 210.
[34] *Supra*, note 16.
[35] G.R. No. L-16234, April 28, 1961.
[36] *Supra*, note 25.

It was held in that case that the offer of compromise by his relative with the parent of the deceased evinced a guilty conscience.

c) Other admission by Conduct

The basis of the rule is the maxim, *"the wicked flee, even when no man pursueth, but the righteous are bold as a lion".*[37] The application of the rule can be seen in *People v. Mamalayon et al.*[38] Here the defendant Cabrera was convicted after the following facts were proved: (a) Lieutenant Cayong went to his home to invite him for questioning and upon being told that he was in the barrio, the soldiers went there but did not find him, (b) When Lieutenant Bugos went to his house, instead of welcoming him he hid between the living room and the palay room and then jumped out of the house, (c) at about fifty yards away from the soldiers he fired at the patrol. All of these betray and evince his guilt. The principle was reiterated in the case of *People v. Talumpa.*[39] One of the decisive considerations for the conviction of the appellant was his trip to Opi, Cotabato soon after the commission of the crime for the feigned purpose of visiting his father whose alleged illness has been neither specified nor satisfactorily proved. This trip has the earmark of flight from justice. Closely akin to the above ruling is the decision in the case of *People v. Balongcas et al.*[40] In that case the defendants' guilt was further established by their disappearance from their homes immediately after the commission of the crime for which reason the Chief of Police could not effect their arrest. The court citing the case of *U.S. v. Alegado* [41] said, "This unexpected flight may be considered as a circumstance tending to establish their guilt."

Not widely dissimilar from admission implied form flight is the act of disposing the instrument of the crime. In one case[42] the Court had ruled for the conviction of the defendant taking into account his act of throwing away the dagger used in grieviously wounding the victim. The act according to the Court is indicative of the accused's consciousness of guilt.

d) Judicial Admission

It is an admission made in court or in advance of trial by a party or his counsel, accepting for the purpose of the suit the truth of some alleged fact, which said party cannot thereafter disproved.[43] Admission may be made either by the party directly or his counsel.

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[37] U.S. v. Alegado, 25 Phil. 510.
[38] G.R. No. L-11210, May 30, 1961.
[39] G.R. No. L-15141, Sept. 19, 1961.
[40] G.R. No. L-11240, March 17, 1961.
[41] *Supra*, note 37.
[42] People v. Delfin, G.R. No. L-15230, July 31, 1961.
[43] 9 Wigmore, Section 1070.

It is a settled rule that the general authority to conduct a trial implies the authority to make admission.[44]

One case decided by the Supreme Court touches upon the issue of who is liable for damages on the bibles in possession of the Manila Port Service. In holding that the appellant Manila Port Service was answerable, the court restricted itself to the stipulation of facts. It ruled: "Resolving the question solely upon the stipulation of facts of the parties there is no alternative but to hold the appellant liable. It was admitted that except for the three case noted as 'received in bad order' the entire shipment was received from the carrier by the Appellant 'complete and in good order'. Thus the court's conclusion was that the goods were damaged while in the possession of the appellant.[45]

The principle of judicial admission can be gleaned from the case of *Quemael v. Olaes* [46] where the Court categorically ruled that the plaintiff's action to reduce the rent adjudged against them is without merit considering the fact that the plaintiffs admitted expressly and under oath in their answer the ownership of the land in question. Therefore they were aware of the flaw of the title and the relationship of tenant and landlord actually existed between the parties. The admission in the answer that they were occupying the southeastern half portion of the land without any right thereto except the tolerance of the owners, proved fatal to the cause of the defendant. The admission in the pleading is binding on the client. This is clearly seen from the case of *Navarro v. Sugar Producers Cooperative* [47] where the question of whether the contract under 1479 of the New Civil Code of the Philippines was an option or bilateral promise to buy and sell, the Court ruled in favor of the option because the plaintiff in paragraph six of his complaint referred to the transaction as an option, then again in his memorandum in lieu of oral argument he expressly agreed that it is an option, a unilateral promise to sell.

In the case of *Coscolluela v. Valderrama* [48] an action for breach of contract, the court ruled in favor of the admissibility of a third document due to the fact that his counsel testifying as a witness admitted having prepared the said papers and the same were signed by the appellant, moreover, the appellant himself upon cross examination admitted the final draft of that incorporation papers had been prepared. In *Gregorio v. Ines Chaves and Co.*[49] a case involving

[44] 9 Wigmore, Section 2594, 4a, 50.
[45] G.R. No. L-17050, May 31, 1961.
[46] G.R. No. L-11084, April 29, 1961.
[47] G.R. No. L-12688, April 29, 1961.
[48] G.R. No. L-13757, August 31, 1961.
[49] G.R. No. L-17721, Oct. 16, 1961.

an action for the collection of the purchase price after two checks given in payment thereof were dishonored, the defendants were ordered to pay the same. This is so since in the defendants' answer they admitted the allegations pertaining to the fact of debt and its non-payment, but gave an excuse for its default due to its inability to collect accounts receivable. The pleaded excuse is clearly no defense, for the creditor is not an underwriter of his debtor's business. Application of the doctrine of judicial admission is also true in criminal case. Hence in *People v. Lacson* [50] which involved the prosecution for heinous murder of Moises Padilla, the Court appreciated the confession in open court by Ayar that he shot and killed Padilla. The Court said: "It is an admission against his own interest. Time tested is the rule that one does not normally own an unlawful act unless it is true."

The rule on judicial admission was applied anew in a civil case [51] where the plaintiff was held to be liable for the payment of attorney's fee in view of the fact that as per his manifestation in court he expressly admitted the responsibility for that payment. The doctrine was applied with equal force in a case [52] decided by the Workmen's Compensation Commission where the Caltex (Phil.) was ordered to pay death benefits for the heirs of the deceased employee who died out of and in the course of the employment. The court based its order on the admission of the Company in its report submitted to the Commission to the effect that the employee was "lost at sea and presumed dead as of October 10, 1956." The reasonable inference is that the employee had accidentally fallen into the sea and drowned.

e) Admission by privies

Admission of one who is a privy in title, such as a former owner or grantor, assignor, or transferor or vendor are admissible against the successor in interest, so long as the act or declaration has relation to the property and is made before the sale, assignment or other disposal of his interest.[53] This is a specie of vicarious admission. The foregoing principle found application in the case of *Republic v. Pasicolan.*[54] This case involved an expropriation proceeding against a lot owned by the Salases. By a cadastral order, the Court of First Instance of Pampanga reversed a former order and adjudicated the lot to Caliuag the intervenor in the present expropriation proceedings. The adjudication in favor of Caliuag was based on a compromise agreement where the Salases waived, quitclaimed

[50] G.R. No. L-8138, Feb. 13, 1961.
[51] Asaurance Ins. v. Salonga, G.R. No. L-17048, Sept. 19, 1961.
[52] Caltex (Phil.) v. Villanueva, G.R. No. L-15658, Aug. 21, 1961.
[53] Salonga, J., *Philippine Law of Evidence*, second edition (1958), p. 194.

and transferred and conveyed all their rights, interests, shares and participation in the lot in question in favor of the intervenor. In other words the intervenor now is a successor in interest to the Salases. The Supreme Court in holding against the contention of the intervenor held, "the admission made by the latter (the Salases) of the petitioner's right to expropriate is binding upon the former (Caliuag, the intervenor) and their rights in the expropriation proceedings are limited to collection of the difference between the provisional value aforementioned and such amount as may eventually be fixed as the just compensation of the lot in question."

f) Vicarious Admission of a Co-Conspirator

The rule states that the act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.[55] This is an exception to the rule of *"res inter alios acta."*

The foregoing doctrine was enunciated in the case of *People v. Linde and Risno.*[56] A prosecution for robbery with multiple rape, the Court held that conspiracy being established by independent evidence, the extrajudicial confession of Linde pointing to Prisno as the co-principal is admissible and constitute a corroborative evidence of the latter's guilt. However, in *People v. Amajul*[57] the Court reversed the finding of the trial court and ruled that the extrajudicial confessions of Moros Djalalong and Madjid were inadequate against their co-defendants as the conspiracy was not proved by direct and independent evidence. It also considered the evidence as hearsay.

G. Part of the *Res Gestae*

The rule states that 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 a part of the *res gestae.* So also statements, accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae.*[58] *Res gestae* are events speaking for themselves through the instinctive and spontaneous words or act of the participants.[59] To be admissible as part of the *res gestae* a statement must be an act for itself, not the person talk-

[54] G.R. No. L-17365, May 31, 1961.
[55] Rules of Court, Rule 123 section 12.
[56] G.R. No. L-10358, Jan. 28, 1961.
[57] *Supra,* note 16.
[58] Rules of Court, Rule 123 sec. 38.
[59] State v. Fisher, 168 LA 584.

ing about the act. It must be spontaneous result of occurrence operating upon the perspective senses of the speaker.[60]

The persuasive effect of the *res gestae* as piece of evidence was appreciated by our Supreme Court in the case of *People v. Alban, et al.*[61] In this case the victim after receiving the fatal gunshot wound, told the police sergeant and others saying, "you arrest Fred (defendant herein) the son of Juan and Paer, because he was the one who shot me." Words of similar import were told before Patrolman Belanto, but the same were not signed upon the advice of the attending physician. This statement was objected to but the court took into account and ruled: "However, the outcry of the deceased naming the assailant after he was shot can be considered as part of the *res gestae*. His statement was made when the deceased had no time or opportunity to concoct or to contrive any falsehood. Under the mental and physical condition of the deceased at the time it can be safely said that the statement was spontaneous and reflected the truth." The foregoing rule was likewise applied in *People v. James Davis*[62] which involved a prosecution for murder. In convicting the defendant the court appreciated as part of the *res gestae* the statement of the deceased Estepa uttered after the attack to the effect that "help me I'm wounded, I was stabbed by James Davis."

H. Dying Declarations

Dying declarations are the statements made by a person after the mortal wound has been inflicted, under a belief that death is certain, stating the facts concerning the cause of, and the circumstances surrounding the homicide. A dying declaration may be made orally or in writing, and in former case, the witness who heard it may testify hereto.[63] A written ante mortem declaration though not signed by the deceased may still be admitted if it is proved and established by witnesses. Thus in the case of *People v. Andia*[64] the Supreme Court in admitting an ante mortem written declaration though not signed by the declarant said, "while the writing itself is not admissible in evidence since it was not signed by the declarant or read to him or signed or acknowledged in any way by him after the writing, the testimony of Dr. Bocar and of the Justice of the Peace suffice to establish the dying declaration." The Court continued that the dying declaration was made when the deceased was conscious of his death, as borne out by the seriousness of the wound and the fact that he died immediately afterwards.

[60] People v. Nortea, 74 Phil. 8.
[61] G.R. No. L-15203, March 29, 1961.
[62] G.R. No. L-18337, Feb. 16, 1961.
[63] Wharton, Criminal Evidence 11th ed. 836 & 885.
[64] G.R. No. L-14462, May 31, 1961.

Thus it may safely be construed that an unsigned written ante mortem declaration may still find admission in court not independently of itself but only when it can be established and proved by witnesses. This is the necessary import of the ruling of the Supreme Court in the above case.

I. Parol Evidence Rule

The rule says that the terms of an agreement having been reduced to writing, it is to be considered as containing all those terms, and therefore, there can be between the parties and their successors in interest, no evidence of the terms of the agreements other than the contents of the writing except: x x x[65] The rule is based on convenience and to eschew fraud. Apparently the Court expanded the application of the rule in *Co Tuan v. City of Manila*[66] to include within the term writing invoices issued by the plaintiff company. It appears that in the determination of whether taxes are payable the Court ruled for its payment by disregarding the testimony of the Factory Superintendent who testified that wholesales made at the factory were factory sales and exempt basing his opinion on the invoices, with the mark 'factory sales tax included.' This was considered by the court as an opinion which is not admissible being contrary to the parol evidence rule since the invoices were before the court, the court is free to adopt its own view on the matter. It is submitted that Factory Superintendent's testimony should have been excluded more properly under the opinion rule.

An exception to the rule is "When the writing fails to express the true intent and agreement of the parties.[67] In this case collateral, oral and written evidence explaining the true intent of the contract becomes competent evidence. Hence in *Coscolluela v. Valderrama*[68] the court held that the written contract between the parties was merely provisional and therefore collateral agreements of the parties creating a new corporation are admissible.

JUDICIAL NOTICE

The basis of the rule is the "maxim *'manifesta non indiquent probatione.'* (What is known may not be proved.) It assumes that the Judge knows the of his jurisdiction and the particular rule of law applicable to a given litigation and it likewise, assumes that the Judge knows or is familiar with facts accessible to reasonably well-informed persons of the community."

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[65] Rules of Court, Rule 123, Section 22.
[66] G.R. No. L-12481, August 31, 1961.
[67] Rule 123, Section 22, *ibid.*
[68] *Supra*, note 48.

In the case of *Gesolgan v. Lacson*,[69] where the Court dismissing the claim of the plaintiff for his increase in salary ruled, "We take judicial notice of the practice being followed in the Philippine Civil Service that an increase in the salary appropriated for a position does not actually accrue to the holder of the position until and unless the said holder has been given the increased salary. An increase in an appropriation or salary does not automatically entitle the holder of the position to such an increased salary."

In another case involving the prescription of the right to execute judgment rendered in a civil case on December 4, 1941 when the action asking for enforcement of the same was brought on May 19, 1954; the court after deducting the period of Moratorium ruled that despite the remaining ten years and twenty-nine days, the action does not prescribe. In deciding the case in favor of the plaintiff, the Court took judicial notice of the abnormal condition existing in Luzon during the Japanese occupation. It said, "But as held in *Talens v. Chuakay*, GR L-10127, June 30, 1958, this Court may take judicial notice of the fact that regular courts in Luzon were closed for months during the Japanese occupation until they were reconstituted by the Executive Commission on January 30, 1942. This interruption in function of the Courts has been held to interrupt the running of prescriptive period. (See also *Palma v. Gelda*, 89 Phil. 416.)

Similarly in *People v. Alido* [71] the Supreme Court in passing upon the credibility of the person identifying the culprit ruled that the "Courts take judicial notice of the fact that in the months of May and June, the days are long and the sun sets after six p.m., for which reason even though it was actually six p.m. when the assault was made the killer can easily be seen and recognized because it was not yet dark." Still on the application of the Rule of Judicial Notice the Court in *Laureano v. Javier* [72] decreed that in the ordinary course of events, laws are not abolished, superseded or amended but continued to be in full force and effect so that the ordinance in question adopted in 1909 was considered to be in full force and effect in 1946.

THE OPINION EVIDENCE RULE

Expressed in its simplest form the rule is: Where the data observed can be exactly and fully reproduced by the witness so that the court can equally well draw any inference from them, the wit-

[69] G.R. No. L-16507, May 31, 1961.
[70] Quiambao v. Manila Motors, G.R. No. L-17384, Oct. 31, 1961.
[71] G.R. No. L-12449, May 30, 1961
[72] G.R. No. L-14116, Jan. 20, 1961.

ness opinion is not wanted and will be excluded.[73] Hence the authors believe that under the facts of the *Co Tuan v. City of Manila* as fully discussed above, the unwarranted opinion of the Factory Superintendent as regards the import of the invoices is ruled out exactly by this rule. In *Republic v. P.N.B.*[74] where as a result of an expropriation proceeding by the government of lands belonging to Francisco, the Court in awarding just compensation disregarded the capricious and whimsical amount testified by the owner himself as regards the value of the land on the ground that it violates the opinion rule. In a case [75] submitted to the Supreme Court for adjudication involving the construction of the Tax Code, the Court refused to take into consideration statements of the sponsor of the bill which later became the Tax Code. Insisting on its own interpretation the Court held, "Moreover, courts are not bound by a legislator's opinion expressed in congressional debates regarding the interpretation of a particular legislation. It is deemed to be mere personal opinion of the legislator." (*Kit v. C.B.; GR November 29 '57.*)

EXPERT TESTIMONY

To help the court reach sober and judicious conclusion upon the facts, evidence is admissible on scientific and technical matters by eliciting the opinion of those specially qualified by study, training or experience.[76] The expert testimony is specially helpful to the court when it is impossible for it to draw an accurate conclusion on the fact presented to it because it is highly technical. Availing this rule, our Supreme Court in the case of *Gaite v. Fonacier* [77] relied heavily upon the testimony of Leopoldo Abad in determining the tonnage factor of iron ore. The Court in accepting the testimony of Abad against all others ruled, "In the face of the conflict of evidence, we take as the most reliable estimate of the tonnage factor of iron ore in this case to be that made by Mr. Abad, Chief of the Mines and Metallurgical Division of the Bureau of Mines, a government pensionado to the United States and mining engineering graduate of the Universities of Nevada and California, with about twenty-two years of experience in the Bureau of Mines". Likewise in another case,[78] the testimony of the Chief Research Chemist of the Public Health Laboratory of the Department of Health, was given weight by the Court in determining the effect of the amount of air on the vegetable lard manufactured for consumption.

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[73] Wigmore, *supra*, section 127.
[74] G.R. No. L-14158, April 12, 1961.
[75] Mayon Motors v. Com., G.R. No. L-15000, March 29, 1961.
[76] Salonga, J., *supra* p. 287.
[77] G.R. No. L-11827, July 31, 1961.
[78] International Oil v. Director, G.R. No. L-13438, May 31, 1961.

STATUTES OF FRAUDS

As a general rule, contracts shall be obligatory, in whatever form they may have been entered into provided all the essential elements for their validity are present. However, the Statutes of Frauds requires that certain specified contracts be written and subscribed to be enforceable. The basis of this rule is that it is better to put with hardship or inconvenience or requiring contract to be evidenced by writing than to endure the frauds and perjuries which are the consequence of oral agreement.[79] An apt illustration of the rule is found in *Paterno v. Jao Yan.*[80] It was an action to recover unpaid back rents and real estate taxes. The original lease of the land was for seven years and the lessee bound himself to construct a building of strong wooden materials which would become the property of the lessor at the termination of the lease. The defendant lessee now avers that there has been an extension of the lease to ten years in consideration of his constructing a semi-concrete building and that he has retained the rents due because the plaintiff refused to recognize the modified contract. The Court ruled for the defendant and stated that the testimonial oral evidence to support his claim is admissible since it is established doctrine that partial performance takes an oral contract but of the scope of the Statutes of Frauds (*Hernandez v. Andal,* 78 Phil. 196). There is partial performance since in lease the taking of possession by the lessee and the making of valuable improvements, the faith of the oral agreement operates to take it out of the prohibition of the Statute, for it would be a gross fraud to permit the lessor in such cases to avoid the lease.[81] While in *San Diego v. Sayson* [82] the contractor cannot recover without the authorization in writing and the price stated thereon. This is following article 1724 of the New Civil Code of the Philippines. However, the Court proclaimed that the said article is substantive and is *not* an extension of the Statutes of Frauds.

PRESUMPTIONS

Presumption may be defined as an assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or established in the action. So, when the basic fact is established the existence of the presumed fact must be assumed unless and until a specified condition is fulfilled.[83] There are two classes of presumptions, namely: Conclusive

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[79] 1 Jones, P., 780-1, The Law of Evidence in Civil Cases (1938).
[80] G.R. No. L-12218, Feb. 28, 1961.
[81] 49 Am. Jur., p. 809 sec. 106 and cases cited.
[82] G.R. No. L-16258, Aug. 31, 1961.
[83] Thayer, J., Preliminary Treatise on Evidence (1898), Chapters 8 & 9.

presumption or presumption juris et de jure and disputable presumption or presumption juris tantum.

Conclusive presumptions are inferences which the law makes so peremptorily that it will not allow them to be overturned by any contrary proof however strong.[84] The trend of modern authorities both commentators and courts, is to treat the so-called conclusive presumption of law as rules of substantive law and not as rules of procedure.[85]

Applying the Rules on Conclusive Presumption the Supreme Court in the case of *Reyes v. Maria Villaflor*[86] held, "Indeed one of the conclusive presumptions prohibits the tenant from denying the title of his landlord at the time of the commencement of the relation of landlord and tenant between them. (Rules of Court, Rule 123, sec. 68). The Court continued that "the law says that the lessee may not deny the title of his or her lessor. These defendants may not now assert title or right to lease such foreshore land to them. A subtenant is estopped to deny the title of his immediate landlord. (51 CJS 910).

Rebuttable presumption

When a rebuttable presumption arises, it continues until overcome by proof to the contrary or by one stronger presumption.[87] In *Carreon v. Agcaoili*,[88] the Court ruled that fraud is not presumed, rather the presumption is that there has been a fair and equal transaction. Consequently, the purchaser in good faith was preferred since there is no clear proof that when he bought the land he knew that there was a flaw in his title. In the case of *People v. Manlapas*[89] the Court held that a plea of guilt is sufficient to sustain conviction even for a capital offense without the introduction of further evidence. Being assisted by counsel de officio, it is assumed that he the defendant understood fully the import of his plea since the presumption is that the counsel regularly and faithfully discharged his official function which includes the duty of advising the accused as to the meaning of his plea of guilt.

In another case, *Fuentes v. Binamira*[90] the Court ruled that the letter overruling his objection to the award of the commission was sent to him at the same address specified in his pleadings. In the absence of any proof to the contrary it may be presumed that he received the same in the ordinary course of the mail. In *Paz v.*

[84] Chamberlain, Trial Evidence by Lesli Thomptins (1936), Section 408.
[85] Tracy, John, Handbook of Law of Evidence (1952), Note 10.
[86] G.R. No. L-15755, May 30, 1961.
[87] Chamberlain, *supra*, p. section 410
[88] G.R. No. L-11156, Feb. 23, 1961
[89] *Supra*.
[90] G.R. No. L-14965, Aug. 31, 1961.

Tobias[91] the Court decreed that since the lower court entertained the action to annul a public sale due to tax delinquency the presumption is that the requirements of the law have been fulfilled respecting the requisites necessary for the lower court to take cognizance of the case. In tax case the presumption is that the tax is valid since the official making the assessment is presumed to be in good faith and to be regularly performing his duties.[92]

In *Quimsing v. Lachica*[93] the court observed that a public officer who conducted a raid on a cockpit held illegally cannot be presumed to be in bad faith, since the presumption is that they are performing their duties in good faith. In the case of *Quinga v. C.A.*,[94] the Court in ruling that the contract was an equitable mortgage took into consideration the following presumptions: (a) inadequate price of ₱200.00 for more than two hectares of land; (b) in spite of the alleged sale, the vendor remains in the possession of the land and the vendee receives the fruit in 1944 more than nine years after the sale. In *Morocoin v. City of Manila*[95] the Court ruled that although the presumption is in favor of the validity and reasonableness of the ordinance, such presumption must nevertheless be set aside when the invalidity or unreasonableness appears on the face of the ordinance itself or is established by proper evidence as it is here, since the raising of the jukebox license to ₱300.00 is patently excessive and unreasonable.

CREDIBILITY, SUFFICIENCY AND WEIGHT OF EVIDENCE

The amount and credibility of evidence usually determine the weight it has to bear in court. Quantity and quality taken together, especially when the evidence approximate the truth and certainty, usually tilts the balance toward a party in a case.

The attitude of the court towards the probative force of evidence is manifested in the case of People v. Curambao.[96] The Court said, "evidence to be believed must be in accordance with common experience and observation of mankind. It must stand the test of logic and naturalness. Here the fact of self-preservation opposes the idea that the deceased would openly fight the carbine carrying peace officer." In *Tuason v. Luzon Stevedoring*[97] the Court ruled that evidence to worthy of credit must not only proceed from a credible source, but must in addition be credible itself and by this

[91] G.R. No. L-15869, Aug. 31, 1961.
[92] Santos v. Nable, G.R. No. L-12073, May 23, 1961.
[93] G.R. No. L-14683, May 30, 1961.
[94] G.R. No. L-14961, Sept. 19, 1961.
[95] G.R. No. L-15351, Jan. 28, 1961.
[96] G.R. No. L-10575, Jan. 28, 1961.
[97] G.R. No. L-13541, Jan. 28, 1961.

is meant that it should be natural, reasonable and probable as to make it easy to believe. The issue being one of credibility, the question of which testimony should be given more credence is best left to the trial judge, who had the advantage of hearing the parties testify and of observing their demeanor on the witness stand.

Slight inconsistencies are not fatal to the credibility of the witness, as long as this inconsistencies do not go to the substance of the case. For as the court held in the case of *People v. Saez*[98] it was said, "while it is true that some of the inconsistencies relied by the appellant exist they are not of substantial nature and do not justify disregarding the testimony of said witnesses. As a matter of fact it is not unnatural or unusual to find similar inconsistencies in the testimony of witnesses who are not well acquainted with the court proceeding and legal technique. Far from destroying their credibility, said inconsistency lead one to believe that the witness testified to the truth and they were not coached or rehearsed before taking the stand." Similarly in the notorious case of *People v. Lacson*[99] the Court that in their view of the consideration of the mass of contradicting evidence, the version of the prosecution witnesses pointing to the guilt of the defendants was the more veracious, direct and credible. While the appellants have pointed out minor contradictions such flaws are to be expected of inexperienced persons. However, this does not militate against their credibility. The witnesses would not deliberately swear away the life of the appellants. Moreover, the narrative is substantially confirmed by the physical and psychological indicia put in evidence.

Parallel to the rulings above is the holding in the case of *People v. Selfaison*[100] where it was held, "As to the inconsistencies they exist only in minor details and are not of sufficient magnitude so as to denote a deliberate intent to utter falsehoods. The same by themselves preclude probable coaching, and far from detracting anything from the witness credibility, only tend to bolster the probative value of their testimony." The Court, however, in the case of *People v. Delfin*[101] did not give credit to the testimony of the defense witness because of its obvious inconsistency with the sworn statement of the witness. While she testified that the sworn statement was subscribed in Naval, the statement itself shows that the subscription was made in Almaria, Leyte. So also in the case of *Yutuk v. Manila Electric Co.*[102] the court in discrediting the testi-

[98] G.R. No. L-15776, March 29, 1961.
[99] *Supra*, note 50.
[100] G.R. No. L-14732, Jan. 31, 1961.
[101] G.R. No. L-15230, July 31, 1961.
[102] G.R. No. L-13016, May 31, 1961.

mony of the respondent company's employee ruled, "His declarations are replete with so many inconsistencies such as for instance he said he was merely passing by the apartment to the statement that he heard the entire conversation of the petitioner with that of the meter inspector." In still another case,[103] the Court in ruling against the appellant's claim noted that it was inconsistent with what was stated in his pleading. In fact, the Court observed, "his claim is refuted by his own testimony. We quote from pages 128 and 129 of the transcript of stenographic notes: (Answer of the appellant to the examination) "It was a conjugal property because when we decided to construct the building, we borrowed from the RFC ₱1,000,000.00 and the condition of the loan was payment of an installment plan of 120 installments." So that the court denied his claim that the loan was less than ₱1,000,000.00. Inconsistency in sworn statements is also indicative of untrustworthiness. Thus in *Republic v. Ting* [104] the Court held that the conflict of the sworn petition and the verified income tax returns as regards number of children was taken against the applicant.

The Court in *People v. Fetalvero* [105] ruled that the credibility of a witness is not upset by consanguinity for it could not be supposed that relationship alone would constrain the witness into callously imputing the crime to the innocent person. Neither does an initial reluctance detract in any way the credibility of a witness. His unwillingness is largely due to his reluctance to be dragged unnecessarily to the case. This was the holding of the Court in the case of *People v. Delfin.*[106]

The Court usually gives considerable weight to testimonies of eyewitnesses. Sustaining the conviction of the defendant the Court in the *People v. Almirez* [107] being direct, positive and suffering from no incongruity. In one hand the Court refused to give credit to the defendant's version of the crime because the account "of the killing by their witnesses was so sketchy and nebulous as to engender suspicion that material points have been concealed to compose a predetermined pattern of the incidents".[108] In another case [109] the Court did not believe in the testimony of a defense witness to the effect that the accused was collecting taxes when the incident took place and that the victim was the aggressor since it is not probable that the witness could have left his officemate without calling the police.

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[103] Sison v. David, G.R. No. L-11268, March 24, 1961.
[104] G.R. No. L-15543, Sept. 29, 1961.
[105] *Supra*, note 35.
[106] *Supra*, note 101.
[107] G.R. No. L-16109-10, Oct. 20, 1961.
[108] People v. Marciano, et al., G.R. No. L-16818, May 31, 1961.
[109] People v. Delfin, *supra*, note 42.

In the same case the testimony of another defense witness was discredited because he failed to explain why of all the passengers that disembarked at Villaba, he saw only the two witnesses of the prosecution whose testimony he now tries to impeach.

The Court in *People v. Davis* [110] held that the theory of self-defense interposed by the defendant is untenable since it is indeed doubtful whether he can still draw out his knife from the right pocket while the deceased was allegedly straddling him and raining blows on him. Self defense should be established by clear, satisfactory and convincing evidence (*People v. Gemina*, 59 Phil. 509). As between the testimony of a witness convicted of a crime of theft and serving sentence and the prosecution's witnesses' testimony which is direct, positive, coherent and truthful the court ruled that the former's testimony is insufficient to impeach the latter.[111]

Self-serving statements are adhered by the Court. Thus in *People v. Ong*,[112] the testimony of the appellant himself as regards his alleged income was set aside as self-deserving.

Passing upon the creditability of a witness regarding the mental condition of a person the Court in the case of *People v. Fausto* [112a] held that the testimony of a psychiatrist is inadmissible since the observation was made only during the thirteen days after the arrest when a constant observation of the symptoms and behaviour of a patient is needed to determine his sanity. Besides the court was of the opinion that the witness to the issue of insanity should be an alienist. But in one case,[113] the corroborative evidence arising from the examination made by Dr. Gaungco on the victim of rape was admitted. The court said that the laceration in the female organ and the sticky mucous in the vagina showing it to be dead spermatozoa are eloquent collaboration of the rape.

The quantitative evidence rule in treason case was passed upon by the Supreme Court in the case of *People v. Cortes*.[114] The high court sustained the conviction on the first count but cleared the defendant from the other two counts since the overt acts alleged under these counts were proved only by one witness.

DOCUMENTS AS EVIDENCE

In a case [115] concerning the issue of whether the petitioner was a naturalize Filipino, a photostatic copy of the decree of naturaliza-

[110] *Supra*, note 62.
[111] G.R. No. L-12236, April 28, 1961.
[112] G.R. No. L-16381, Dec. 30, 1961
[112a] G.R. No. L-16381, Dec. 30, 1961.
[113] People v. Penafiel, G.R. No. L-17669, Dec. 30, 1961.
[114] G.R. No. L-14712, April 29, 1961
[115] G.R. No. L-16801, Aug. 31, 1961.

tion issued by the CFI of Camarines Norte was introduced in evidence. The Court in refusing to accept it ruled that the copy was merely a photostatic copy of an unsigned certificate allegedly issued by the CFI of Camarines Norte with the signature of the Clerk of Court not identified; therefore inadmissible. Likewise in another case [116] the petitioner in support of his claim that he has a lucrative trade submitted an unsworn statement of his father certifying that he has been receiving a salary of ₱250.00 a month, which the Court excluded since it is not verified and besides it is self serving.

Where the law requires a mode of proving a fact anything short of the legal requisite is inadmissible in evidence. Thus in the case of *Montilla v. Montilla,*[117] the Court in holding that the exhibits consisting of an entry in the marriage book of the Parish of Isabela, Negros Occ. and a will of another person not the alleged father of Gertrudes Montilla held that these exhibits are mere private writing and cannot be classified to be a record of birth, a will or a public document as provided in Article 131 of the Civil Code of 1889. For a document to be credible there must not appear on its face any indicia of suspicion. The Supreme Court held in the case of *Manila Trading v. Medina* [118] that the payment evidenced by receipts introduced by the defendant, does not correspond to the balance of the promissory notes. In arriving at the decision the court said, "It is highly suspicious that the receipts should be mutilated at the places where the serial numbers and the year of issue must appear. Moreover the receipts were identical in shape, size and color to those issued before July 28, 1956, before the forms were changed and differ from those issued from July 28, 1956.

CIRCUMSTANCIAL EVIDENCE

Evidence is circumstancial if it goes to prove a fact or series of facts other than the facts in issue, which if proved may tend by inference to establish a fact in issue.[119] In the case of *People v Gallardo* [120] involving a prosecution for murder the defendant was convicted after the following facts were established: (a) the deceased is the mistress of the accused, (b) they had two children, (c) the day before the date of the killing the deceased received a letter from the accused telling her that a bus would fetch her the following day, (d) between 10 and 11 o'clock the following day the bus of Jaen Express where Gallardo was the Shop Superintendent fetched her, (e) the following day a woman of the height and

[116] Pe v. Republic, G.R. No. L-16980, Nov. 29, 1961.
[117] G.R No. L-14462, June 30, 1961.
[118] G.R. No. L-16777, May 30, 1961.
[119] Tracy, *supra*, note 85.
[120] G.R. No. L-12080, Jan. 28, 1961.

age of the victim was found in a well in Jaen, (f) the morning after the departure of the deceased the accused fetched their two children from the victim's place and deliberately lied as to the existence of the victim, (g) the accused did not even bother to make inquiries as to her whereabouts and did not report the disappearance of his mistress to the police. Clearly his guilty knowledge can be deduced from his acts. In *People v. Aldio* [121] the Court convicted the accused of murder due to the following proved facts: (a) the accused being the first cousin of the deceased did not initiate the move to have the authors of the death of his cousin investigated, (b) his indiscreet advice that the widow should declare that the deceased died from a bolo wound showing his interest in suppression of the truth, (c) being the barrio lieutenant he was always away from home specially when the daughter of the deceased notified him of the death of her father and also when the constabulary officers went to his house for the investigation.

BURDEN OF PROOF

Burden of proof can be defined as the duty of establishing the truth of a given proposition or issue by a quantum of evidence as the law demand in the case in which the issue arises.[122] The rule was restated in *Sari Yoko Co. v. Kee Bok et al*[123] where the Court ruled against the plaintiff's application for failing to establish prior registration of the trademark in the Philippines. The Court said, "that he who asserts and not he who denies must prove. *'Ei incumbet probatio que decit non que negat.'* In *People v. Davis* [124] the Court ruled that self-defense to be appreciated should be established in a clear and satisfactory and convincing manner. And since the evidence of the defendant fails to measure up to this criterion, his defense collapsed. In *Republic v. Orden de PP Benedictimus* [125], the Court said that the parties should be given an opportunity to present their evidence proving the vital question of fact which is whether there is a need to open the extension of Azcarraga to ease the traffic problem. The fact that it was taken judicial notice of by the lower court was repudiated by the Supreme Court. In *Paz v. Tobias,*[126] the Court ruled that it was incumbent on the defendant to prove their assertation of non-payment by the plaintiff, so as to give the appellants the opportunity to show otherwise. In *Santos v. Nable* [127] the Court ruled that taxpayer who contests the correct-

[121] G.R. No. L-1249, March 30, 1961.
[122] Kohlsaat v. Parkersburg and Co. 11 ALR 686.
[123] *Supra*, note 10.
[124] *Supra*, note 62.
[125] G.R. No. L-12792, Feb. 28, 1961.
[126] *Supra*, note 9.
[127] *Supra*, note 92.

ness of the assessment has the burden of proving his contention. In *Mercado v. Lira et al.*[128] on the question of the recovery of moral damages based on culpa contractual, the claim was denied since there was no direct and positive evidence of fraud, malice or bad faith contemplated by law on the part of the respondents because the cause of the accident was merely the bursting of the tire while the bus was overspeeding. The burden of proving fraud and bad faith was on the claimant and he failed to prove the same. In a naturalization case[129] decided by our Supreme Court it was held, "the burden of proof was on the appellant (applicant) and it does not appear that he had adduced sufficient proof to overcome what his own witness spontaneously declared. In the case of *Canlas v. Aquino*[130] the Court did not dissolve the preliminary injunction because the petitioner failed to sustain his allegation that the construction of the rice mill will not disturb the hospital nearby. In the language of the Court it was held: "Instead of alleging fact to substantiate the presence of the condition required by the Rules of Court, Tayag merely reproduced the language of the motion, thus relying on the abstract principle, without any concrete and specific premise to bear out said conclusion". In *Ocampo v. Gatchalian*[131] it appeared that the plaintiff sued the defendant for the sum of the check drawn by her. The check was given by her to her agent for the purpose of showing it to the owner of the car to be bought by the defendant. However, the agent negotiated the check to the clinic for the payment of the hospital debt of his wife and even received a cash value of the balance of the check. It appearing that the check had two parallel lines at the upper left hand corner, meaning it was only for deposit and not convertible to cash and that the defendant has no outstanding liability to the plaintiff, that the amount did not exactly correspond to the obligation of the agent's wife, the Court ruled that all these facts should have put the plaintiff to inquire as to the why and wherefore of the possessor of the check. The duty devolved upon the plaintiff to affirmatively proved that he actually acquired said check in good faith. Failing in this task, he was not considered a holder in due course.

ALIBI

In almost every criminal case the defendant usually resort to alibi for his defense. Being at the easy disposal of the accused the court is always cautious in receiving alibi. Unless it is supported by indubitable evidence alibi is usually discredited.[132] To convince

[128] G.R. No. L-13328, Sept. 28, 1961.
[129] Pe v. Republic, G.R. No. L-16980, Nov. 29, 1961.
[130] G.R. No. L-16815, July 24, 1961.
[131] G.R. No. L-15126, Nov. 30, 1961.

the court of the alibi it must be proved in a clear, positive and convincing manner. So that in the case of *People v. Racca*[133] the court ruled out the defense of alibi because the persons presented to support the alibi were close friends, relatives and neighbors who were regarded as not sufficiently credible. The alibi to be believed must show that it was physically impossible for the accused to be present at the scene of the crime. This was the ruling in the case of *People v. Penafiel.*[134]

In the case of *People v. Linde*[135] the Court overruled the defense of alibi because it was not physically impossible for the accused to be at the place of the crime. According to the court it loses weight in the face of positive identification of the accused by the prosecution witnesses. In the same manner the court in the case of *People v. Alban*[136] did not give credit to the defense of the accused because, "his version of the crime is insufficient to overcome the clear and positive testimony of the victim's wife, who recognized and identified him as the person who shot the deceased." The defense of alibi which was set up in exculpation of the crime was of no avail in the face of the fact that his identification and participation of the crime appear established by positive, clear and competent evidence. This was the decision in the case of *People v. Balongcas.*[137]

Consonant to the rulings enunciated above, the Court in *People v. Selfaison*[138] held that the testimony of the offended party is entitled to great weight since she knew of the four assailants by virtue of prior acquaintance. In *People v. Baniaga,*[139] the defense of alibi collapsed in the face of the clear and straightforward testimony of the offended party who positively recognized him as the malefactor. This rule is also applied in *People v. Fetalvero*[140] where the alibi was ruled out due to the presence of positive identification of the defendant by the eyewitness of the prosecution.

In *People v. Lopez*[141] the Court did not give credence to the alibi because the testimony of the defense dovetailed to the minutest detail to the sequence, exact time and place of the event on the day in question. In *People v. Obaldo*[142] the Court in overruling the defense of alibi state that the alibi is weak and unconvincing because

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[133] People v. Corpus, G.R. No. L-10104, Jan. 28, 1961.
[134] *Supra*, note 26.
[135] *Supra*, note 118.
[136] *Supra* (See also People v. Cabral, G.R. No. L-14045, Oct. 28, 1961).
[137] *Supra*. (See also the case of People v. Castillo, G.R. No. L-11793, May 19, 1961 & People v. Saez, *supra*).
[138] *Supra*, note 40.
[139] G.R. No. L-14752, Jan. 28, 1961.
[140] G.R. No. L-14905, Jan. 28, 1961.
[141] *Supra*. (See also People v. Bayubay, G.R. No. L-13901, Sept. 19, 1961 and People v. Blaza, G.R. No. L-13899, Sept. 19, 1961).
[142] G.R. No. L-12704, Sept. 16, 1961.
[143] *Supra*, note 25 (compare with ibid note 141).

the defense witness testified as the minute details and every move of the defendant and even tried to establish the alibi on the particular date, December 23. These facts according to the court tends to show their fabrication and/or knowledge of the crime.

CONCLUSIVENESS OF THE FINDINGS OF FACT OF THE LOWER COURT AND ADMINISTRATIVE AGENCIES

As to questions of facts the findings of the lower court and other administrative agencies exercising quasi-judicial function are seldom disturbed by the appellate courts, especially when they are supported by substantial evidence. Hence in *National Fastener Corporation v. CIF* [143] the findings of fact by the CIR were sustained because they were fully substantiated. Similarly as held in the case of *People v. Tila-on* [144] the court in affirming the findings of fact of the CFI held, "The rule is now firmly established that where there irreconcilable conflict of the testimony of witnesses, the appellate court will not disturb the findings of the trial court when the evidence of the successful party considered in itself is sufficient to sustain judgment appealed from.

Even the findings of fact by the Bureau of Lands Director are usually conclusive upon the appellate Court, in the absence of fraud, imposition or mistake, other than errors of judgment in estimating the value of evidence. Where however error or fraud taints the administrative decision the same remains subject to review by the court of justice and the latter may do so at the instance of any interested party. Also in the case of *Motos v. Soler* [145] involving an application for homestead patent the Court held:

"This court held that a decision rendered by the Director of Lands and approved by the Secretary of Agriculture and Natural Resources upon questions of fact is conclusive and is not subject to review by the courts in the absence of showing that such decision was rendered in consequence of fraud, imposition or mistake other than error of judgment in estimating the value or effect of evidence."

Consistent with the same principle the findings of fact of the Deportation Board were respected by the Supreme Court stating that in exclusion cases the Immigration authorities' findings of fact shall stand unless they are manifestly unfair and arbitrary. The weight of evidence and their credibility rest in the sound discretion of the Board.[146]

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[143] G.R. No. L-15834, Jan. 20, 1961.
[144] G.R. No. L-12406, June 30, 1961.
[145] G.R. No. L-11329, May 31, 1961.
[146] Singh v. Bd. of Commissioners, G.R. No. L-11015, Feb. 25, 1961.