EVIDENCE

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PRESUMPTION

DEFINITION

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.[1] In short, when the basic fact is established in an action, the existence of the presumed fact must be assumed unless and until a specified condition is fulfilled.[2]

There are two classes of presumptions, namely: Conclusive presumptions or presumption *juris et de jure* and disputable presumptions or presumption *juris tantum.*

A presumption can *not* arise on the strength of another presumption. It must be based on facts and not upon inferences. Thus, the Supreme Court said:

> "The *presumption of correctness of assessment* being a mere presumption cannot be made to rest on another *presumption* that the circumstances in 1952-1953 are presumed to be the same as those existing in 1949-51 and July of 1955." [3]

CONCLUSIVE PRESUMPTION

A conclusive presumption is an inference which the law makes so peremptorily that it will not allow them to be overturned by contrary proof, however, strong.[4] The modern trend is to treat so-called conclusive presumptions of law as rules of substantive law, and not as rules of procedure.[5]

REBUTTABLE PRESUMPTION

Rebuttable presumption is a presumption which, when it arises, continues until overcome by proof to the contrary, or by some

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[1] SALONGA, PHILIPPINE LAW OF EVIDENCE, Second Edition (1958), p. 194.

[2] WIGMORE, STUDENT'S TEXTBOOK ON THE LAW OF EVIDENCE (1935), sec. 2491; THAYER, PRELIMINARY TREATISE ON EVIDENCE (1898), chapters 8 & 9.

[3] Collector v. Benipayo, G.R. No. L-13656, Jan. 31, 1962.

[4] WIGMORE, *supra,* note 2; CHAMBERLAYNE, TRIAL EVIDENCE (LESLIE THOMPTINS, 1936), sec. 408.

[5] TRACY, HANDBOOK OF LAW OF EVIDENCE (1952), note 10.

stronger presumption.[6] This class, enumerated in Section 69 of Rule 123 of the Rules of Court, embraces by far the greater number as compared with the number of conclusive presumptions in Section 68 of Rule 123.

Section 69 (e)

Where a party has evidence in his power and within his reach by which he may repel a claim or charge against him, and he omits to produce it, a presumption of fact arises that the charge or claim is well-founded.[7] The suppression, however, must be willful in order that this unfavorable presumption may arise. Thus, the failure to present the payrolls of the company during the trial of the case, does not warrant the application of the unfavorable presumption since the documents were actually exhibited at the second hearing. The report of the examiner based on the said payrolls was accepted by the Supreme Court which resulted in the affirmance of the order of the trial court reinstating certain laid-off workers.[8]

Likewise, in the following cases, the presumption was not held to apply:

1. Where the evidence suppressed or withheld is mere corroborative or cumulative evidence or evidence which does not appear necessary.[9]

2. Where the suppression is an exercise of a privilege against testimonial compulsion.[10]

3. Where the evidence is at the disposal of both parties to the case.[11] In the case of *People v. Morado*,[12] the defense imputes to the prosecution a willful suppression of evidence due to the failure or refusal of one witness to the murder to take the stand notwithstanding the fact that his name was listed as a state witness. Defendant was however free to present the same witness to prove his claim that his testimony would have been adverse to the prosecution but he failed to avail of said opportunity. Since the evidence was also at the disposal of the defense, and it would have the same weight against one party as against another, the Court held that the presumption of suppression of evidence is inapplicable. The refusal to

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[6] CHAMBERLAYNE, *supra*, note 4, sec. 410.
[7] *See* sec. 69(e), Rule 123, Rules of Court.
[8] NLU v. CIR, G.R. No. L-14978, May 15, 1962.
[9] U.S. v. Gonzales, 22 Phil. 325 (1912); People v. Velayo, G.R. No. L-7257, Feb. 8, 1955; People v. Tulale, G.R. No. L-7233, May 19, 1955.
[10] U.S. v. Melchor, 2 Phil. 588 (1903).
[11] Staples-Howe Printing Co. v. Manila Bldg. & Loan Assn., 36 Phil. 417 (1917); People v. De Otero, 51 Phil. 221 (1927).
[12] G.R. No. L-16714, Jan. 31, 1962.

testify was explained by the fact that the witness' brother quarrelled lately with the brother of the deceased.

Section 69 (p) & (q)

The rule expressed in paragraphs (p) and (q) are extensions of the presumption of regularity of official acts. This extension is based upon the fact that men generally act properly in accordance with the customary modes of business, rather than otherwise.[13] Moreover, it is a definite duty of every citizen, in the exercise of his rights and in the performance of his duties, to act with justice, give every one his due, and observe honesty and good faith.[14]

Accordingly, it has been held in one case [15] that there being an absence of proof to the contrary, the services rendered by the plaintiff for the repair of defendant's tow cars are deemed regularly and satisfactorily done. For this reason, the defendant must pay for the services rendered.

Private transactions are presumed to be fair and regular. Upon the maxim *fraus est odiosa* (fraud is odious), fraud of creditors can not be presumed. In the case of *Collector v. Benipayo*,[16] the defendant, an owner and operator of Lucena Theatre was assessed a deficiency tax on the ground that Benipayo, had for a considerable period of time cheated and defrauded the Government by selling to each adult patron two children's tax free tickets instead of one. The Court said that fraud is a serious charge. And to be sustained, it must be supported by clear and convincing proof, which is lacking herein. However, in *Jacinto v. Salud*,[17] there were sufficient proofs to show that fraud was practised by Jacinto against the appellants. When Jacinto supposedly delivered the property, he did it only in paper without bringing the plaintiff to the premises, although he told her (plaintiff) that there were kasamas working for her. He caused the property to be resurveyed resulting into the drawing of Exhibit C (Survey Plan showing that part of the designated lot number 2 was segregated and designated as lot number 5). This lot number 5 has an area exactly equal to the area found lacking in the hectares belonging to the plaintiff.

In *Ramos et al. v. Carino et al.*,[18] the Court held that, no evidence having been submitted by the plaintiff that the defendants acquired the land in bad faith, good faith must be presumed.

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[13] JONES, THE LAW OF EVIDENCE IN CIVIL CASES (1938).
[14] *See* Art. 19, NEW CIVIL CODE.
[15] RAMCAR, Inc. v. Garcia, G.R. No. L-16997, April 25, 1962.
[16] G.R. No. L-13656, Jan. 31, 1962.
[17] G.R. No. L-17955-57, May 30, 1962.
[18] G.R. No. L-17429, Oct. 31, 1962.

Section 69 (z)

It is likewise presumed that things happened according to the ordinary course of nature and the ordinary habits of life.[19] It is based upon experience and reason, that things will happen as they usually do; that events—natural, business, social and the like—will take their normal and regular course.[20] Thus, the Supreme Court in the case of *Ilusorio et al. v. Hon. Santos et al.*, held:[21]

> "The (lower) court's presumption of the average yield of the lands in question being based on actual crops harvested, it is to be presumed, in the absence of proof to the contrary, that such crops were normal crops. The mere fact that the tenants' harvest varied from one crop to another is not sufficient to declare them abnormal; for the law itself in basing the classification of the land on the normal average yield for the three preceding agricultural years (Sec. 8, Act 4054 & Sec. 33, Republic Act No. 1199) assumed that such yield will be variable. The presumption is that things have happened according to the ordinary course of nature (Sec. 69[z], Rule 123, Rules of Court), and the burden of proof to show abnormality is on the one claiming it. Herein, the landowners failed to submit adequate evidence in support of their claim that the crops taken into account by the court in classifying the land of the tenants as second class were affected by abnormal or unusual factors. The lower court was likewise justified in making the inference that the average yield for the three preceeding years of 1951-1952 crops was the same as the average for the three years following it, there being no evidence to the contrary."

OTHER CASES ON REBUTTABLE PRESUMPTION

In the case of *Villarosa v. Guanzon*,[22] several voters belonging to the same precinct appeared to have written the names of particular candidates in an identical manner. The Court held that, in the absence of a positive proof to the contrary, the words or signs appearing on the ballot are presumed to have been placed thereon accidentally. The dots, lines or hyphens written between the names and surnames of candidates or in other parts of the ballot, including the traces of letters and the first letter or syllable of names which the voter did not continue shall be considered innocent and shall not invalidate the ballot unless it should clearly appear that they have been deliberately placed by the voter to serve as identification marks. The reason is that an identification mark can not be presumed. It must be established by clear evidence.

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[19] Sec. 69(z), Rule 123, Rules of Court.
[20] CHAMBERLAYNE, *supra*, note 4, sec. 382; JONES, *supra*, note 13, sec. 252.
[21] G.R. No. L-15788-89, March 30, 1962.
[22] G.R. No. L-19605, Sept. 28, 1962.

Section 44 (1) of the *Workmen's Compensation Act*, as amended by Republic Act No. 772, provides: "In any proceeding for the enforcement of the claim for compensation under this Act, it shall be presumed in the absence of substantial evidence to the contrary that the claim comes within the provisions of this Act." In other words, in the absence of proof that the injury or death supervening in the course of employment has arisen because of the same, the death or injury is by law compensable unless the employer can clearly establish that it was not caused or aggravated by such employment or work.[23] Mere absence of evidence that the mishap was traceable to the employment does not suffice to reject the claim; there must be a credible showing that it was not so traceable.[24]

In the case of *Batangas Trans. Co. v. Vda. de Rivera*,[25] it was held that where the cause of death supervening the course of employment is unknown, the death is compensable. In *NAIRA v. WCC*,[26] the Court held that the fact that the illness followed closely the exertions of the decedent in unloading employer's barge strongly supports the inference that the thrombosis leading to his death was at least precipitated by the strain.

JUDICIAL NOTICE

Judicial notice may be defined as the cognizance of matters taken as true by the tribunal without the need of evidence, because they are so well-known, so easily ascertainable, or so related to the official character of the court.[27] In the operation of the principle, two propositions must be granted: "*First*, . . . that the judge knows the law of his jurisdiction and that he knows the rule of law applicable to a given dispute. *Second*, . . . that the judge trying and deciding a case knows, or at the very least, is familiar with facts accessible to reasonably well-informed persons in the community." [28]

The principle originated from two old maxims, namely: *manifesta (or notoria) non indiquent probatione* (what is known need not be proved) and *non refert quid notum sit judici si notum non sit in forma judicii* (it matters not what is known to the judge, if it is known judicially).

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[23] NAIRA v. Workmen's Compensation Commission, G.R. No. L-13066, Oct. 30, 1962.
[24] Bohol Land Trans. Co. v. Vda. de Madanguit, 70 Phil. 685 (1940).
[25] G.R. No. L-7658, May 8, 1956.
[26] G.R. No. L-18066, Oct. 30, 1962.
[27] 9 WIGMORE, sec. 2565, cited in SALONGA, *supra*, note 1, p. 44.
[28] SALONGA, *supra*, note 1, p. 43-44.

It is obvious that the doctrine of judicial notice is dictated by considerations of plain common sense. It is founded in part, on the regard for the limitations of time.[29]

There are three general categories of facts subject to judicial notice, namely: (1) facts which are of public knowledge or *notorious matters;* (2) facts which are capable of unquestionable demonstration or *demonstrable* matters; and (3) facts which ought to be known to judges because of their functions or *governmental matters.*

NOTORIOUS MATTERS

With particular reference to matters of history, it may be said that many historical facts of general and local character are judicially noticed. In *Pindangan Agricultural Co. v. Dans,*[30] the Supreme Court took judicial notice of what was then current political history by acknowledging that at the time (July 9, 1949) when the sales and lease applications filed by the plaintiff corporation were pending before the Director of Lands, Senator Cipriano Primicias was the minority floor-leader of the House.

As regards laws of nature, the Supreme Court in one case,[31] did not hesitate to take judicial notice of the fact that the month of August is characterized by showers and rain, after which the atmosphere becomes clear. So that when the witness for the prosecution said that "during the day there were stars, "she must have meant that during the *time when the assault was made* there were stars in the sky at night. She did not say that during the day, meaning daytime, there were stars.

With reference to usual and ordinary customs, habits and actions of men, courts accept business or professional conditions within the community as established without necessity of proof. In the case of *Dr. Belen v. Dr. De Leon,*[32] the question presented was whether a floor fan owned by a dentist is "necessarily used in connection with his trade or employment" so as to be exempt from execution under Section 12 (b), Rule 39 of the Rules of Court. The Supreme Court held that it was exempt, taking judicial notice of the fact that most dental clinics are not spacious nor air-conditioned; that the work to be done by a dentist is of a delicate nature while the lot of the patient is not exactly what may be called pleasant and desirable.

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[29] SALONGA, *ibid.*, p. 47, citing McKelvey, sec. 13.
[30] G.R. No. L-14591, April 25, 1962.
[31] People v. Ayonayon & Acerador, G.R. No. L-16664, March 30, 1962.
[32] G.R. No. L-16414, Nov. 30, 1962.

GOTERNMENTAL MATTERS

As courts of law constitute a vital part of the government of the country, they are bound to notice, without proof, governmental acts and relations, and other matters of governmental concern, satisfactory proof of which, if not already known, is within easy reach of the courts, but which at times may be difficult for litigants to prove in accordance with the rules of evidence.[33]

There is no question that a court is not banned from taking judicial notice of parts of its records.[34]

As to records of other legal proceedings than those being transacted at the moment in the court's presence, the general rule is that, a court is not bound to take judicial notice of said records. The original of a judicial record must be produced in proof.[35] The two exceptions to the general rule are:

1. As a matter of convenience to all parties and in the absence of objection, a court may properly treat all or part of the original record of a former case filed in its archives as read into the record of a case pending before it, when with the knowledge of the opposing party, reference is made of it for that purpose by name and number or in some other manner by which it is sufficiently designated, or when the original record of the former case or any part of it is actually withdrawn from the archives by the court's direction at the request or with the consent of the parties, and admitted as a part of the record in the case then pending.[36]

2. Where records of proceedings in other cases are so closely connected with a pending case, a court may take judicial notice of such records. For example, in *Alcantara v. Yap*,[37] the Supreme Court took judicial notice of the fact that the lots in question were registered in the name of the plaintiff's predecessor-in-interest since 1941 as decided in *Tiburcio v. PHHC*.[37a]

ALIBI

Being at the easy disposal of the accused, it has become common for the accused to resort to the defense of alibi. So much so that the Supreme Court has to rule again:

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[33] SALONGA, *supra*, note 1, pp. 54-55, citing McKelvey, sec. 20.
[34] *See* People v. Morado, G.R. No. L-16714, Jan. 31, 1962.
[35] WIGMORE, *supra*, note 2, sec. 2579.
[36] Adiarte v. Domingo, 40 O.G. (13th Supp. No. 21), p. 190; 71 Phil. 394, 396 (1941); U.S. v. Claveria, 29 Phil. 527 (1915).
[37] G.R. No. L-18530, May 30, 1962.
[37a] G.R. No. L-13429, Oct. 31, 1959.

> "Alibi being a defense easy to concoct must be established by clear and convincing evidence . . . It does not deserve credence if it is not shown that the accused was so *far away* from the scene of the crime that it is *physically impossible* for him to be present and commit the crime." [38]

Alibi is of little weight, if any, whenever an opportunity to commit the crime is present such as when the accused has his residence near the place of the commission of the crime,[39] or where the scene of the crime was not far away from the place where the accused was attending a band concert,[40] or where the accused at the time of the commission of the offense, was in the vicinity of the place where the crime was committed.[41]

The defense of alibi will also be denied where the accused failed to insist, on appeal, on said defense.[42]

Even if corroborated, alibi will not stand if there is *positive identification* of the accused.[43] This is especially so where identification was made by witnesses who had no motive to testify against the accused.[44]

Needless to say, alibi in order to deserve the court's consideration, must be corroborated by credible or indubitable evidence. Thus, the Supreme Court denied the defense of alibi in the case of *People v. Telan* [45] because the same was supported exclusively by testimonies of witnesses who bear close ties of relationship with the accused. Clearly, alibi deserves no weight at all where the testimony, besides being self-serving and biased was not even corroborated.[46]

CREDIBILITY, SUFFICIENCY, AND WEIGHT OF TESTIMONIAL EVIDENCE

Evidence, to be worthy of credit, must proceed not only from a credible source, but must in addition, be credible in itself. By

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[38] People v. Bautista, G.R. No. L-17772, Oct. 31, 1962.
[39] People v. Ayonayon & Acerador, *supra*, note 31.
[40] People v. Llanto, G.R. No. L-15634, April 23, 1962.
[41] People v. Timoteo Cruz, G.R. No. L-15369, April 26, 1962.
[42] People v. Rogel, G.R. L-15318, March 31, 1962.
[43] People v. Ayonayon, *supra*, note 31; People v. Padua, G.R. No. L-14566, April 28, 1962; People v. Telan, G.R. No. L-17921-22, June 29, 1962; People v. Asi, G.R. No. L-17410, June 30, 1962; People v. Regal, G.R. No. L-14753, July 31, 1962; People v. Bagsican, G.R. No. L-13486, Oct. 31, 1962; People v. Ablog, G.R. No. L-15310, Oct. 31, 1962; People v. Roxas *et al.*, G.R. No. L-16947, Nov. 29, 1962; People v. Catli, G.R. No. L-11641, Nov. 29, 1962; People v. Paulin, G.R. No. L-16491, Nov. 29, 1962; People v. de los Santos *et al.*, Nov. 30, 1962.
[44] People v. Rafanan, G.R. No. L-13289, Sept. 29, 1962; People v. Orteza, G.R. No. L-16033, Sept. 29, 1962; People v. Tuazon *et al.* G.R. No. L-10614, Oct. 22, 1962; People v. Domenden & Segundo, G.R. No. L-17822, Oct. 30, 1962.
[45] People v. Telan, *supra*, note 43.
[46] People v. Asi, *supra*, note 43.

this is meant that it should be natural, reasonable and probable so as to make it easy to believe.[47]

When the issue is 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. Thus, in *People v. Ortega*,[48] the Court held that the findings of the lower court which saw and heard the witnesses testify and observed their deportment and manner of testifying during the trial will not be disturbed on appeal, in the absence of showing that it overlooked certain facts of substance and value, that if considered would affect the result of the case. This rule was reiterated in *M.D. Transit & Taxi Co. v. Pepito*.[49]

Slight inconsistencies are not fatal as long as such inconsistencies are not so material and substantial as to affect the credibility of witnesses. As a matter of fact, said inconsistencies lead one to believe that the witness testified to the truth and they were not coached or rehearsed before taking the stand.[50]

However, in most cases, slight inconsistencies can be explained to the satisfaction of the court. Thus, in *People v. Cutura*,[51] the discrepancy as to where the victim was hit was explained by the fact that the assault was effected by different persons.

Honest eyewitnesses at times do not coincide in the narration of events swiftly occurring before them especially with respect to trifling details.[52] In *People v. Valera*,[53] the discrepancy in the testimony of a witness before the court and affidavits previously signed by him has been sufficiently explained. In *People v. Ablog*,[54] the Court held that the inconsistencies relate to minor details and could be explained away by shock, excitement and haste under which the witnesses executed their sworn statements on the night of the occurrence.

An inconsistency can also be explained by tiresome cross-examination.[55] Any observant trial judge can see whether the contradic-

[47] Tuazon v. Luzon Stevedoring, G.R. No. L-13541, Jan. 28, 1961.
[48] G.R. No. L-16033, Sept. 29, 1962.
[49] G.R. No. L-16481, Sept. 29, 1962.
[50] People v. Valera, G.R. No. L-15662, Aug. 30, 1962; People v. Cutura, G.R. No. L-12702, March 30, 1962; People v. Repato & Natod, G.R. No. L-17892, Sept. 29, 1962; People v. Ablog, *supra*, note 43.
[51] G.R. No. L-12702, March 30, 1962.
[52] People v. Moises, GR.. No. L-10876, Sept. 23, 1958.
[53] G.R. No. L-15662, Aug. 30, 1962.
[54] G.R. No. L-15310, Oct. 31, 1962.
[55] People v. Tuazon *et al.*, *supra*, note 44.

tions are due to human imperfections and lapse of time so as to call for leniency.[56]

Whether credibility is affected by reason of relationship, by blood or by affinity, depends upon the circumstances of each case. In *People v. Valera*,[57] the Court said that although the witnesses for the prosecution, by reason of their relationship to the victim were naturally interested in having the killer punished, it did not appear that they had a personal grudge against him.[58] The absence of any evidence as to the existence of an improper motive actuating the principal witnesses for the prosecution strongly sustains the conclusion that no such improper motive existed. Nor does the fact that the witnesses were first cousins of the victim's wife necessarily make them untrustworthy, specially considering that one of them is also related to the defendant. Estrangement of the defendant from his wife, sister of one of the witnesses, is not a sufficient cause to implicate him.[59]

However, in *People v. Balancio and Querubin*,[60] the Court held that due to the close relationship of the two prosecution witnesses with the deceased, it is manifest that their testimony is tainted with bias and can not be accepted without qualification. To this is added the fact that said witnesses had misunderstandings with the accused.

Therefore, mere relationship of a witness to a party in the controversy does not disqualify or render him incredible if otherwise he is trustworthy. Otherwise, many crimes will remain unsolved.[61]

The weight of a testimony depends upon several factors. Greater weight is given to straight-forward account of witnesses if sincere in its spontaneity,[62] and convincing in its directness and minuteness.[63] Thus, the Court convicted the accused in *People v. Sanwah*,[64] because along with the following circumstances, the witness gave his testimony with ease and without hesitation: (1) the witness did not know the victim; (2) the accused was his close friend and had no reason to implicate him; and (3) in the investigation,

[56] People v. Lumantas, G.R. No. L-16383, May 30, 1962. *See* Alcantara v. Yap, *supra*, note 37.
[57] G.R. No. L-15662, Aug. 30, 1962.
[58] People v. Quiatchon, G.R. No. L-11109, June 8, 1958.
[59] People v. Bautista *et al.*, G.R. No. L-17772, Oct. 31, 1962.
[60] G.R. No. L-17520, May 30, 1962.
[61] People v. Bautista *et al.*, *supra*, note 59.
[62] People v. Susukan, G.R. No. L-18030, Oct. 31, 1962.
[63] People v. Bautista *et al.*, *supra*, note 59.
[64] G.R. No. L-15333, June 29, 1962.

(few days after the incident) the witness executed an affidavit which in substance corroborated his testimony in open court. This indicates lack of an afterthought.

However, the evidence in support of the contention of the defendant in *Vergara v. Vergara*,[65] is so detailed that from this alone, the Court did not feel convinced on the sincerity of the witnesses nor on the truthfulness of the declaration. Neither could the Court believe the testimony of the notary public because in the ordinary course of his position, he would not inquire into such very minor details.

Great weight is also accorded the testimony of a disinterested witness who has no reason to violate his oath or to declare falsely.[66]

But in the case of *People v. Bagsican*,[67] the testimony of the Chief of Police was biased in favor of the accused because he was appointed by the Mayor who belonged to the political faction headed by the lawyer for both of the accused. He was biased if not a perjured witness, the Court observed. On the other hand, declarations of interested witnesses are not necessarily biased and incredible. On the contrary it would be unnatural for them who are interested in vindicating the crime to impute it other than to those responsible.[68]

In naturalizaion cases, a credible person is not merely an individual who has not been previously convicted of a crime, who is not a police character and has no police record, but also one who has not perjured in the past or whose affidavit or testimony is not incredible. What is credible is not the declaration made but the person making it, which clearly implies that such character witness must have a good standing in the community in which 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 trustworthiness of the petitioner. It is not enough that a witness states personal knowledge of petitioner's proper and irreproachable conduct and character in his affidavit; such irreproachable conduct must be sufficient to satisfy the Court as to the existence of such qualifications.[69]

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[65] G.R. No. L-17524, May 18, 1962.
[66] People v. Ayonayon, *supra*, note 31.
[67] G.R. No. L-134861, Oct. 31, 1962.
[68] People v. Lardizabal, G.R. No. L-8894, May 11, 1956.
[69] Mo Yuen Tsi v. Republic, G.R. No. L-17137, June 29, 1962; In the Matter of Pet. of Go v. Republic, G.R. No. L-18068, Oct. 30, 1962; Sy Pinero v. Republic, G.R. No. L-17399, Oct. 30, 1962; Chuki Tan Si v. Republic, G.R. No. L-18006, Oct. 31, 1962; Si An Dok v. Republic, G.R. No. L-16828, May 30, 1962; Yan Kang v. Republic, G.R. No. L-17013, May 30, 1962.

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 demands in the case in which the issue arises.[70]

IN CIVIL CASES

The plaintiff in a civil case is called upon only to prove the *material allegations* in his complaint constituting his cause of action. In *RAMCAR Inc. v. Garcia*,[71] the cause of action relates to the prestation of repair services to defendant's two cars. The plaintiff having proven its case, the defendant would run the risk of being defeated if he did not prove his allegations. It is not enough for the defendant to allege defective repairs. Although his averment is negative that is, that the repairs were not made in accordance with the agreement between the parties, the defendant has asserted the affirmative of his case. Thus, the burden of proof lies on the party who substantially asserts the affirmative of the issue on the principle that the suitor who relies on the existence of a fact should be called upon to prove that fact.

In the case of *Taligaman Lumber Co. v. Collector*,[72] prescription is one of the affirmative defenses set up by the taxpayer against the Collector in an action for alleged filing of fraudulent tax returns. The Court held that it was incumbent upon the taxpayer to prove that it submitted said returns and having failed to do so, the conclusion must be that no such returns had been filed and the Collector therefore had ten years within which to make the corresponding assessments as it did in this case. The same ruling was laid down in the case of *Queral v. Collector*.[73] In that case, the appellant claims that there is no evidence as to the date when the original tax assessment was issued by the Collector or when it was received by the taxpayer. But prescription is a matter of defense. Hence, the burden of proof is on the taxpayer to prove that the full period of limitation has expired and this requires him to positively establish the date when the period started running and when the same was fully accomplished.

Again, in *Rio Y Compania v. C.A.*,[74] the defendant was required to plead and prove that he was not covered by the Moratorium Law in order to establish that the plaintiff's cause of action was barred

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[70] Kohlsaat v. Parkersburg & Co., 266 F. 283; 11 ALR 686.
[71] G.R. No. L-16997, April 25, 1962.
[72] G.R. No. L-15716, March 31, 1962.
[73] G.R. No. L-16705, Oct. 30, 1962.
[74] G.R. No. L-15666, June 30, 1962.

by prescription. But the defendant has not shown nor pleaded that he was not a war sufferer and had not filed a war damage claim. While these facts constitute negative averments they are of the essence of his contention that plaintiff's claim was barred. Hence, the burden of proof lies on the defendant. This is incumbent upon him so that the petitioner may not claim the benefit of the Moratorium Law, and failing to do so, the logical conclusion is that he was a war sufferer and prescription was tolled until May 18, 1953 when the Act was declared unconstitutional.

Nor does the fact that the complaint was filed 17 years after the accrual of action indubitably establish prescription, for according to the Court in the case of *Uy Chao v. De la Rama SS*,[75] it does not rule out the possibility of the defendant being a war sufferer. The defendant's contention that the plaintiff can not avail of the pleading that he was a war sufferer because it was not alleged nor proved was overruled and the defendant was ordered to comply with the request of the plaintiff for admission that he was a war sufferer and had filed a war damage claim.

A naturalization case is not an ordinary judicial contest to be decided in favor of the party whose claim is supported by preponderance of evidence, naturalization not being a matter of right but a privilege of delicate and exacting nature affecting public interest of the highest order. Thus, the Supreme Court held in *Yap Suat Poo v. Republic*,[76] that it is incumbent on the petitioner for naturalization to prove affirmatively, not only with his testimony but also with that of the persons whose affidavits were filed in support of his petition for naturalization, that he does not possess any of the disqualifications provided by Commonwealth Act No. 473. The absence of disqualifications is part and parcel of the case for naturalization and the petitioner has the burden of proving such absence, affirmatively, in addition to his possession of affirmative qualifications.[77]

CONSPIRACY

One exception to the rule of *"res inter alios acta"* is found in the rule which 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.[78] The requisites of

[75] G.R. No. L-14495, Sept. 29, 1962.
[76] G.R. No. L-13944, March 30, 1962.
[77] Chuki Tan Si v. Republic, *supra*, note 69.
[78] Rules of Court, Rule 123, Sec. 12.

the rule are as follows: (1) the conspiracy is first proved by evidence other than the admission itself; (2) the act or declaration is related to the conspiracy; and (3) the act or declaration was made during the existence of the conspiracy.

According to Article 8, paragraph 2 of the Revised Penal Code, a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it. Once conspiracy is proved, the act of one conspirator in furtherance of the common purpose is the act of all.[79]

PROOF OF CONSPIRACY

How is conspiracy proved? By its very nature, conspiracy is difficult of direct proof. Conspirators do not ordinarily enter into written agreements, and their meetings are held in utmost secrecy. Proving the existence of a plot is no easy task, and it may be extremely difficult to connect some parties to it.

For this reason, direct proof is not essential in order to establish the existence of a conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter in and pursue a common design. It may be proved by a number of indefinite acts, conditions and circumstances which vary according to the purposes to be accomplished. One will be justified in the conclusion that the defendants were engaged in a conspiracy if it be proved that they pursued, by their acts, the same object, one performing one part and another performing part of the same, so as to complete it with a view to the attainment of that same object.[80]

Thus, in the case of *People v. Timoteo Cruz*,[81] the Court held that although there was no direct proof of conspiracy between the accused, the following circumstances left no doubt for the existence of unity of action and purpose between them: (1) the shot fired by one immediately after the other; (2) the simultaneous presence of both the accused at the scene of the crime; and (3) that the latter boarded the former's car which was ready for the get-away. Again, in the case of *People v. Villanueva et al.*,[82] there was no direct proof of conspiracy. Yet, the Court declared the existence of conspiracy. It was observed that the act of the accused in the light of the re-

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[79] *See* Art. 177, Revised Penal Code; People v. Chan Li Wat, 50 Phil. 182 (1927); cf. Gardiner v. Magsalin, 40 O.G. No. 12, 2471 (1941).
[80] People v. Cabrera, 43 Phil. 65, 78 (1922).
[81] G.R. No. L-15369, April 26, 1962.
[82] G.R. No. L-13687, July 31, 1962.

citals in the extra-judicial confession showed that the killing was planned among them. The chain of circumstances fitting tightly well into the statements in the extrajudicial confession was more than sufficient to establish conspiracy.

However, in the case of *People v. Regal*,[83] the Supreme Court warns us that, where there is no proof of conspiracy, mere passive presence of the accused at the scene of the crime does not make him a co-principal.

ADMISSIONS

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.[84]

It is presumed that every sane man will act so 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.[85]

In the case of *Empamano et al. v. Director of Lands*,[86] the Court held that even granting that the widow made an admission to the effect that the land for which she was applying for registration together with her sons belongs to the Government and that there was a waiver of all rights to it, she was bound alone for she was unauthorized to do it for her children.

ESTOPPEL

In the case of *Velasquez v. Coronel et al.*,[87] it was contended that the procedure set by law in the sale at the public auction of delinquent real property was not followed because the whole property was sold and not only so much thereof as may be necessary to satisfy the taxes and penalties. The contention was not sustained it appearing that what actually happened was according to law. This was alleged in the petition and although no evidence was actually submitted to substantiate it, the same was not denied by the respondent and such was deemed admitted. He was *estopped* from assailing the validity of the sale based on that procedural ground.

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[83] G.R. No. L-14753, July 31, 1962, citing People v. Silvestre, 56 Phil. 353; People v. Bañez, 77 Phil. 136 (1946).
[84] SALONGA, *supra*, note 1, p. 93.
[85] WIGMORE, *supra*, note 2, p. 93.
[86] G.R. No. L-14106, Jan. 31, 1962.
[87] G.R. No. L-18745, Aug. 30, 1962.

In *People v. Valera*,[88] *estoppel in pais* consisted of the following: (1) remaining silent even when one of the accused pleaded guilty to the offense of slight physical injuries alone when he was the one guilty of murder; (2) appellant and his witnesses did not present themselves to the authorities to reveal what they knew about the incident; and (3) one of the defense witnesses told appellant's lawyer what he knew, yet he was never presented to the authorities to give his information.

In *People v. Ventura*,[89] the defendant was prosecuted for alleged illegal practice of medicine. He contended that the Government was estopped from prosecuting him because the Government induced him to practice drugless healing. He tried to show that medical practitioners, members of Congress, provincial governors, city mayors and municipal board members wrote to him requesting him to help certain persons; that municipal ordinances and resolutions were passed authorizing him not only to practice his method of healing but also to put up clinics in some municipalities and that he was even extended free transportation facilities to work in Central Luzon Sanitarium. The Supreme Court however, held that the doctrine of estoppel does not apply to the government. It is never estopped by the error of its agents assuming such encouragement and bargaining away the public health and safety for the semblance of benefit to a few government officials. Repetition of illegal acts can not make them legal, the Court added.

CONFESSIONS

The Rules of Court provides that a declaration freely and voluntarily made by an accused confessing himself to be the perpetrator of a crime is admissible in evidence against him.[90] This is the so-called confession. The serious consequences of a confession impose a duty on the courts to subject such admission of guilt to close scrutiny. Thus, the confession of a loyal follower of the accused that he was the one who killed the deceased even at the risk of self-incrimination should not be received. The Court held that the version made by such follower was far from being self-incriminating. It was rather exculpatory in that it constituted self-defense and defense of a stranger. His testimony in substance was that the deceased was the aggressor who attacked the accused and that the confessing man

[88] G.R. No. L-15662, Aug. 30, 1962.
[89] G.R. No. L-15070, Jan. 31, 1962.
[90] Rule 123, Sec. 14.

herein intervened. However, the deceased wounded him until he was forced to fight back. This would have constituted defense of a stranger. The Court added that if great caution has always been exercised in accepting the confession of a stranger to the information, the more so herein where the declarant without risk to himself would relieve all the accused of criminal responsibility.[91]

The general rule is that the whole of a confession must be put in evidence by the prosecuting officer. To allow introduction of fragments of a confession admitting those indicative of the prisoner's criminality and suppressing others which by limiting or modifying the former may establish his innocence is inconsistent with all the principles of justice and humanity. When a confession is offered and admitted, the defendant is entitled to have all that was said at the time introduced in evidence including exculpatory statements.[92] There is an exception to this rule however. This is where the trial judge in the sound exercise of his discretion holds that certain portions of the confession are improbable or dangerous to believe because other facts or events reveal that said portions are incredible and unworthy of credit. The reason is the natural tendency of the transgressor with very rare exceptions to acquit himself while he can from liability that might arise from his act or at least mitigate it in the eyes of the law and his fellowmen.[93]

Considering the serious consequences of a confession, the Court must take pains in scrutinizing whether the confession was voluntarily made or not. The personal circumstances of the accused must be considered in determining the voluntariness of his confession. The age, character and situation of the accused at the time it was made are important considerations. In one case,[94] the Court considered the fact that the three accused who confessed were ignorant, not being able to speak Spanish, English or Visayan and were without the assistance of an interpreter at the time they confessed. Thus, it held it proper for the new lawyer of the accused to present evidence regarding circumstances under which the confessions were made. It was shown that the former counsel of the accused objected to the admission of the affidavits of confession only on the ground of lack of proper identification of the confession and not to its voluntariness.

On the same question of whether a confession is voluntary or not, much depends on the situation and surroundings of the accused.

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[91] People v. Lumantas, *supra*, note 56.
[92] FRANCISCO, RULES OF COURT, pp. 365-66.
[93] People v. Piring, 63 Phil. 546 (1936); U.S. v. Gavarlan, 18 Phil. 510 (1911).
[94] Bilaan v. Cusi, G.R. No. L-18179, June 29, 1962.

This is the position taken by the courts whatever the theory of exclusion of incriminating statements may be. Much depends on the intelligence of the accused or the want of it. The important thing is that the accused must realize the importance of his act. In *People v. Orteza*,[95] the accused, repudiating his extrajudicial confession, claimed that he executed it because he was maltreated by the constabulary officers. However, it was not sufficiently explained why, if such claim was true, he did not report the same to the Justice of the Peace before whom his oath was taken. Besides, the written statement contained details regarding the commission of the crime which would have come only from a person who could furnish them of his free will. His subsequent re-enactment of the crime in the presence of a number of responsible persons militated against his claim of maltreatment. Similar rulings were made in various cases where the Court held as voluntary the confession certified by the Justice of the Peace Court before whom they were made, there being no proof of the alleged maltreatment of the police;[96] where the accused signed his statement before a fiscal who explained its contents to him before he signed the statement and which admissions were marked with deletions and corrections showing no duress;[97] where the confessions contained details the police could not have invented.[98]

In one case,[99] appellants were convicted partly on the strength of the extrajudicial confession of the accused which was corroborated by circumstancial evidence. It was urged that the accused who confessed must be absolved because the affidavit contained exculpatory statements exonerating him from guilt. The Court held that it need not believe the confession in its entirety. Similarly, where the recitals in the extrajudicial confession of one of the conspirators are corroborated in its important details by other proofs which are in the record, it may be considered as part of the evidence against the parties concerned. While the confession was hearsay as to the other accused this general rule admits of exceptions. One of them is when a defendant who made the confession is called to testify as a witness for his co-defendants. His confession then becomes competent evidence to contradict his testimony in behalf of his co-defendants. This was what happened in this case where the two other accused adopted as part of their defense not only the testimony of the accused who confessed but also his statement before the Justice of the Peace Court.

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[95] G.R. No. L-16033, Sept. 29, 1962.
[96] People v. Tuazon, *supra*, note 55.
[97] People v. Tiongson, G.R. No. L-
[98] People v. Villanueva, G.R. No. L-12687, July 31, 1962.
[99] *Ibid.*

Confessions may be either judicial or extrajudicial.[100] While there is no need to offer judicial confession in evidence to be admissible, such need exists in extrajudicial confessions. If such extrajudicial confessions are not offered as exhibits, they cannot be taken into account.[101]

CORPUS DELICTI

Corpus delicti literally translated means "body of the crime." It may be proved either by circumstantial evidence or by direct evidence. If it is to be proven by the former, the circumstances should constitute an unbroken chain which leads to a fair and reasonable conclusion which points to the defendant to the exclusion of all others as the guilty person. It is indispensable that the evidence be derived from interrelated facts and duly proven in the manner that will lead to a logical and rational conclusion beyond all reasonable doubt that the accused is the author of the crime. In other words, there must be, from all the circumstances, a combination of evidence which in the ordinary and natural course of things leaves no room for reasonable doubt as to the guilt of the accused.[102] In *People v. Taruc*,[103] one of the assignment of errors was that there was failure to prove *corpus delicti*. The Court dismissed this assignment by holding that there could not be any better proof of *corpus delicti* than the identification of one of the witnesses who described in detail how the victims were stripped of their clothes and beaten to death while lying on the ground until they died.

CIRCUMSTANTIAL EVIDENCE

Circumstantial evidence is that which relates to a series of other facts other than the fact in issue which by experience have been found so associated with that fact that in the relation of cause and effect, they lead to a satisfactory conclusion. Such evidence is founded on experience and observed facts and coincidence establishing a connection between the known and proven facts and the facts sought to be proved. Circumstantial evidence is of a nature identically the same with direct evidence. The distinction is that direct evidence is intended evidence which applies directly to the facts which forms the subject of inquiry, the *factum probandum*. Circumstantial evidence, on the other hand, is a minor fact or facts of such a nature

[100] Judicial confessions are those made in court usually in the form of a plea of guilty while extrajudicial confessions are those made out of court usually to investigating officers. SALONGA, *supra*, note 1.

[101] People v. Enot, GR.. No. L-17530, Oct. 30, 1962.

[102] FRANCISCO, EVIDENCE, p. 1166; People v. Ong Chiot Lay, 60 Phil. 788 (1934).

[103] G.R. No. L-14010, May 30, 1962.

that the mind is led intuitively or by a conscious process of reasoning toward or to the conviction that from it or them some other fact may be inferred.[104]

Flight may be considered a circumstantial evidence in the determination of guilt. In the case of *Pareja v. Hon. Amado Gomez*,[105] the Court held that the scant data on the record permits the Court to do more than speculate on the probability of the flight on the part of the petitioner. This was in answer to the contention that petitioner's social standing and other personal circumstances indicate the non-probability of flight. What the Court wanted to say in short was that the requisites for the admissibility of circumstancial evidence were not all proven. Circumstantial evidence to be sufficient to convict the accused must comply with the following requisites, to wit: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such that it produces a conviction beyond reasonable doubt.[106] Although the case did not dwell sufficiently on these requisites, what may be reasonably implied is that at least, the second requisite was not complied with. The inference of non-flight cannot be based on the inference that one of petitioner's social standing would not resort to flight.

Motive is another circumstantial evidence of guilt or innocence. Motive is the purpose which leads a person to the doing of an act. Proof of motive does not establish guilt nor want of it establish innocence and it is not necessary for the prosecution to offer evidence thereof. But an inquiry in this regard is often of great importance, particularly in cases of circumstantial evidence. It assists in fixing the crime on the proper person and in some cases is strongly instrumental in determining the degree of the offense.[107] In *People v. Dumlao*,[108] the issue hinged on the identity of the person or persons who killed the decedent. Identification of the accused was made by the victim's son. Besides such identification, the Court found that the accused had motive to kill the deceased. The accused believed the deceased instrumental to the execution of their cousins and the latter also turned down a request that the accused cousin's body be transferred to another burial ground. It can be gleaned from this case that motive was not wholly relied upon but was used only to corroborate the positive identification made by the son of the victim. In

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[104] WIGMORE, *supra*, note 2, pp. 54-55; 1 JONES, EVIDENCE, Sec. 6.
[105] G.R. No. L-18733, July 31, 1962.
[106] Rule 123, Sec. 98, Rules of Court.
[107] FRANCISCO, *supra*, note 102, pp. 438, 1103.
[108] G.R. No. L-17163, Sept. 28, 1962.

People v. Solano,[109] the accused argued that their conviction should be reversed because the prosecution had failed to establish any motive for the killing. The Court dismissed this contention by saying that motive is unessential to conviction when there is no doubt as to the identity of the culprit as herein, where all the defendants owned and admitted participation in the criminal act. In reiteration, in the case of *People v. Rogales,*[110] the Court held that motive is not absolutely necessary to pin one's liability. Proof of it is essential only in case of doubt as to the identity of the killers, not so when the killer's liability is established by clear, positive and direct evidence.

While in numerous decisions, the Supreme Court has strongly condemned the unexplained delay in the institution of criminal prosecution because it creates suspicion about the motives of the supposed offended party, yet it has also been ruled that such delay when explained is not sufficient to create a reasonable doubt as to the guilt of defendants. The law justly provides that the period within which criminal action may be brought if the action is brought earlier is no proof that the facts stated in the complaint are not true. In *People v. Catli,*[111] the Court held that the delay in the prosecution of the crime was sufficiently explained. The silence of the witnesses was caused by their fear of huk reprisals. Indeed before the witnesses disclosed facts to the authorities, the dissidents were already foraging the barrio and intimidating the residents.

Identification of the culprit may be accomplished by circumstantial evidences. Thus, in *People v. Cloma,*[112] identification of Cloma as one of the accused was corroborated by other circumstantial evidences, to wit: (1) shells found near the victim's body and that imbedded in the house of the victim were from the same caliber; and (2) the carbine from which the shells were fired was found in the possession and control of Cloma and the latter's brother admitted that it was used by his brother.

DYING DECLARATION

The declaration of a dying person, made under a consciousness of an impending death may be received in a criminal case wherein his death is the subject of inquiry as evidence of the cause and sorrounding circumstances of such death.[113] This rule constitutes an exception to two general rules of evidence. They are: (1) that which

[109] G.R. No. L-13967, Sept. 29, 1962.
[110] G.R. No. I-17531, Nov. 30, 1962.
[111] G.R. No. L-11641, Nov. 20, 1962.
[112] G.R. No. L-15580, May 10, 1962.
[113] Rule 123, Sec. 28, Rules of Court.

rejects hearsay; and (2) that which secures for the accused the right to meet the witnesses face to face. The real basis of admissibility aside from any supposed theory of necessity is the notion which long age became a rule of law that the conscious danger of impending death is equivalent to the sanction of an oath. The reasons for its admissibility are: (1) necessity, that is, his death renders it impossible to take the witness stand; and (2) trustworthiness. Lord Baron Eyre describes it thus: "The declaration is made in extremity when the party is at the point of death and every hope of the world is gone, when every motive to falsehood is silenced and the mind is induced by the most powerful considerations to speak the truth." [114] A situation so solemn and awful is considered by the law as creating an obligation equal to that imposed by an oath administered in court. In one case,[115] the *ante mortem* statement pointed to appellants as those who fired the shots. It cannot be disputed that such statement partook of the nature of a dying declaration because it was made when the hope of survival was very slim. In fact, the declarant died a few hours after the incident. Similarly, the testimony of the doctor who was present at the time the decedent made the declaration and the sergeant who typed it prove its authenticity. That the deceased gave it under consciousness of an impending death was shown by the attending physical and serious nature of the wounds resulting in his death.[116] The surmise that because of the gravity of the wounds the deceased could not have spoken to his wife and revealed the identity of his assilants was overcome by positive testimony of the wife and the brothers who heard the declarations.[117]

EVIDENCE IN ELECTION CASES; ADMINISTRATIVE CASES

Evidences in an election case are generally of two kinds: (1) documents required to be produced in court for examination; and (2) evidence aliunde if any which the parties may deem necessary to present. In the production of the first, consisting of election paraphernalia, their examination may be conducted in a summary manner. In the second, it may be done as in an ordinary trial because no particular procedure is outlined in the Election Code and Rule 132 of the Rules of Court provides that the rules shall not apply to election cases except by analogy or in a suppletory character and whenever practical and convenient.[118]

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[114] FRANCISCO, *supra*, note 102, pp. 520-22.
[115] People v. Rogales, *supra*, *note* 110.
[116] People v. Cortez & Uy, G.R. No. L-13968, Oct. 31, 1962.
[117] People v. Telan, *supra*, note 43.
[118] Asis v. Ilao, G.R. No. L-17541, Jan. 31, 1962.

Appellant, in the case of *Oromeca Lumber Co., Inc. v. SSC*[119] contended that the Commission erred in taking cognizance of the contents of the Articles of Dissolution inspite of the fact that they were not made part of the stipulation of facts. The Court considered the contention not meritorious. The proceeding commenced by appellant before the Commission was not judicial but administrative in nature. It is a well settled rule that in proceedings of this kind the technical rules of procedure, particularly of evidence applied in judicial trials do not strictly apply.

DOCUMENTARY EVIDENCE

Rule 123 Section 35 of the Rules of Court provides that entries in official records made in the performance of his duty by a public officer or by a person in the performance of a duty specially enjoined by law are *prima facie* evidence of the facts therein stated. The Court gave the reasons for this rule in an early case,[120] saying that the impracticability of disrupting official business by constantly calling the recording officials to attend as court witnesses and the special circumstance of trustworthiness in official duty gave rise to this rule.[121] Official documents fall into three groups, namely: (1) registers or records; (2) returns and reports; and (3) certificates.[122] A register or record is a series of entries on related subjects, kept in official custody in connected shape. Wherever there is an official duty to do a thing, there is also an implied duty to keep a record of the things done; hence the record is admissible, whether the duty arises expressly or impliedly.[123] The two most important classes of records are records of marriages, births and deaths, and records of deed. Statements made in these records are only prima facie evidence of its truth and contrary evidence may be brought to overcome its probative value. In the case of *Alano et al. v. Ignacio et al.*,[124] the Court considered the tax declaration and payment of such taxes made by defendant as constituting one of the conclusive evidences of possession of defendant. The Court held

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[119] G.R. No. L-14833, April 28, 1962.

[120] Antillon v. Barcelon, 37 Phil. 148 (1917).

[121] This rule is another exception to the Hearsay Rule as long as the following requisites are present: (1) the entry or statement must be in writing; (2) it must be made by a public officer or by another person especially enjoined by law to do so; (3) it must be made by a public officer in the performance of his duties or by another person in the performance of a duty specially enjoined by law; and (4) it must be based on personal knowledge of the facts by him stated acquired by him personally or through official information. SALONGA, *supra*, note 1, p. 411.

[122] SALONGA, *supra*, note 1, p. 413.

[123] SALONGA, *ibid.*

[124] G.R. No. L-18434, Feb. 25, 1962.

that assuming that the plaintiff has proven that the land in dispute had been worked on by his stepfather in the concept of an owner and thus he has built up a prima facie case, it was completely overcome by the conclusive evidence of possession submitted by the defendants, to wit: (1) tax declaration from 1913 and evidence of payment from that time up to the present; (2) deed of mortgage as evidence of defendant's predecessor's having exercised ownership over two of the lots therein assessed and in defendant's name; and (3) adverse and exclusive possession and ownership for 45 years. As against the testimonial evidence of plaintiff, defendant's documentary evidence was given more weight.

In an action to cancel alien certificate of a petitioner and to elect Philippine citizenship, the only evidence of the political status of petitioner consisted of a certificate of baptism stating that his mother was born in Surigao in 1881 and that the latter's parents were a certain Marcelina Dayapat and Consolacion Gonzaga and a picture showing that she has the features of a Filipina and is attired in the typical dress of a Filipina. Other evidences presented for petitioner was his being referred to as a Filipino in his birth certificate, in his marriage certificate and the birth certificate of his children. Against these were presented the fact of petitioner joining the Chinese volunteers and registering himself as a Chinese in the Bureau of Immigration and that in 1944 he, having reached the age of majority, did not make a formal election of his citizenship but waited until after seven years have elapsed.[125]

From these two cases, a reasonable implication is that the courts will not consider these records and registers as conclusive evidence of statements made therein unless corroborated by other and stronger evidence. The reason for this is that usually, the recording officer does not himself have personal observation of the data but relies upon a written statement required to be furnished to him by one who does have an interest in the document expressing his own wishes.

In *Yatco et al. v. Cruz et al.*[126] the objection raised against the alleged copy of the decision as lacking authenticity was not sustained. The Court held that it was not necessary that an authentic copy be produced to reconstitute a decision of the court. Evidence sufficient to prove the contents of the lost or destroyed document according to the Rules of Evidence would be sufficient.[127] Besides, the record on appeal in both cases appeared to be authentic because in one

[125] Dy Cueco v. Sec. of Justice, G.R. No. L-18069, May 26, 1962.
[126] G.R. No. L-46500-48114, Dec. 29, 1962.
[127] Rule 123, Sec. 51, Rules of Court.

case, a certified copy of the original record existing in the Court of First Instance was submitted as well as a printed copy thereof and in the other case, a printed record on appeal. Against these record of appeal, no objection was presented. As to the objected decision the Court was satisfied of its correctness which was submitted in view of the ratification of its correctness and truthfulness by former Chief Justice Paras whose memory can be attested by the present members of the Court. Also, this decision and of Justice Moran coordinated with the nature of the issues presented in the proceedings leading to their rendition such as the pleading in the court of origin and the decision of that court of origin appealed from. A study of the decision in question in relation to the judgment appealed from and the pleadings on which the decision was based provide the reason to adopt that the questioned copy is correct and if not authentic was sufficiently exact to satisfy beyond the reasonable scruples of any unprejudiced mind.

In another case,[128] the petitioners alleged that they were tenants dispossessed by the landlord and that there was no such lease contract between their landlord and a third person as to the same land. The error assigned was that the Court should not have disregarded the contract of lease between the petitioners and their landlord, the due execution and genuineness of which had not been denied by the adverse party and no proof having been presented that it is not what it purports to be. The Court found that the petitioners objected vigorously to the acceptance of the contract as evidence and that petitioners attempted to show that no lease was executed. In still another case,[129] the plaintiffs were able to prove by indubitable document that they were not only possessors of the property in question but were also the exclusive owners thereof. Testimony of a layman which was presented by the opposing party should not be taken seriously to overcome an indubitable title of plaintiff supported by Torrens title in their name.

HEARSAY

Evidence is called hearsay when its probative force depends in whole or in part on the competency and credibility of some person other than the witness by whom it is sought to produce it.[130] The term "hearsay" as used in the law of evidence signifies all evidence which is not founded on the personal knowledge of the witness from whom it is elicited and which consequently does not depend wholly

[128] De la Cruz y Delfin v. Dollete, G.R. No. L-17932, May 30, 1962.
[129] Alcantara v. Yap, *supra*, note 37.
[130] 22 C.J. 199.

for its credibility and weight upon the confidence which the court may have in him. Its value if any is measured by the credit to be given to some third person not sworn as a witness to that fact and consequently not subject to cross-examination.[131] Hearsay evidence may either be verbal or in writing.[132] The ultimate test as to whether a statement is hearsay or not is whether the witness may be cross-examined concerning the fact about which he testified.[133] Our Rules of Court provides that a witness can testify to those facts only which he knows of his own knowledge, that is, which are derived from his own perception except as otherwise provided in the rule.[134] The reason for this rule is that the truth about a matter in dispute can best be discovered from those who knew it rather than have another testify as to what the men who knew it had said. In a naturalization case, *Go v. Republic*,[135] one of the witnesses did not have sufficient personal knowledge of the facts pertinent to the petition to vouch for the qualification of petitioner and testified to some of the data contained in petitioner's affidavit such as his date of birth as supplied by the latter. The Court rejected this as pure hearsay.

COMPETENCY TO TESTIFY

Under our law,[136] parties or assignors of parties to a case or persons in whose behalf a case is prosecuted is incompetent to testify against an executor or administrator or other representative of a deceased person or against a person of unsound mind upon a claim or demand against the estate of such deceased person or against such person of unsound mind as to matter of fact occuring before the death of such deceased person or before such person became of unsound mind. Chief Justice Brickell summed up this rule by saying: "If death has closed the lips of one party, the policy of the law is to close the lips of the other." [137] This exception was introduced for the benefit of those representing the deceased or incompetent person and their representatives may, if they choose, waive this privilege. Waiver may take any of the following forms: (1) failure to object in time when the evidence was given; (2) deposition of the opposing party was taken by the representative of the estate; and (3) cross examination of the opposing party as to the prohibited matter.[138] This

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[131] UNDERHILL, EVIDENCE, p. 63.
[132] 6 Encyc. of Evidence, p. 48.
[133] WHARTON, CRIMINAL EVIDENCE, 11th ed., p. 672.
[134] Rule 123, Sec. 27, Rules of Court.
[135] G.R. No. L-18068, Oct. 30, 1962.
[136] Rule 123, Sec. 26(c), Rules of Court.
[137] Louis v. Eastman, 50 Ala. 471.
[138] SALONGA, *supra*, note 1.

third form of waiver was what occurred in the case of *Abraham v. Estate of Ysmael.*[139] In that case, the incompetency of assignees of the parties to the transaction with the dead party was waived when the counsel for the administratrix extensively cross-examined the witness on the very subject matter of the prohibition. The Court held that it cannot be believed that counsel's cross examination lengthily done on the prohibited matters was merely to establish the motive, prejudices and predilections of the witness. The reason for this rule is that a litigant cannot be permitted to speculate as to what his examination of the witness may be. Having made his selection of the two courses which he may pursue, he has no right after he discovers that the course selected is not to his advantage and after he has put the opposite party to the expense and has consumed the time of the courts to change his position. Such is unfair both to the opposite party and to the courts.

IDENTIFICATION

Identification of the culprit must be positive and clear for the identification of the wrong man might lead to injustice to the innocent and free the guilty. In *People v. Telan,*[140] the Court was convinced, from the demeanor and manner of testifying by the two eyewitnesses who were also the targets of the ambush shooting, that the defendants were the attackers. They could not have been mistaken because they were only two meters away from the accused at the time of the shooting. In *People v. Dumlao,*[141] identification was made by the son of the victim who was with the deceased at the time of the crime, and in *People v. Roxas,*[142] the Court held that the dovetailing testimony of the widow and one of the prosecution witnesses leave no room for doubt that the two appellants were among those guilty of robbery with murder and rape. They were readily recognized by the widow as attested to by her admitted failure or refusal to identify the other suspects of similar built first shown to her by the authorities. That she did not know their names and was unable to describe their appearance to the police does not detract from her veracity since recognition and description are different processes that do not necessarily go together. Description presupposes a facility of communication that many persons do not possess.[143]

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[139] G.R. No. L-16741, Jan. 31, 1962.
[140] *Supra,* note 117.
[141] G.R. No. L-17163, Sept. 28, 1962.
[142] G.R. No. L-16947, Nov. 29, 1962.
[143] People v. De los Santos, G.R. No. L-16301, Oct. 31, 1962, held that the identity of the accused was proved beyond reasonable doubt.

OPINION EVIDENCE

Opinion evidence means the testimony of a witness given in the trial of an action that the witness is of the opinion that some facts pertinent to the case exist or do not exist, offered as proof of the existence or non-existence of that fact.[144] Our law [145] provides that a witness can testify only to those facts which he knows of his own knowledge, that is, which are derived from his own perception except as otherwise provided in the rule. Thus the belief expressed by the witness presented by the petitioner for naturalization that the latter would make a good citizen and that they recommend his admission to citizenship is mere conclusion unsupported by facts and is not entitled to any weight.

The rule is that "the opinion of an intimate acquaintance respecting the mental sanity of a person, the reason for the opinion being given may be received in evidence and in the case of an expert, the value of his opinion depends on the facts he can adduce to support it. If the basis of his conclusion is not very well shown or the logic of his conclusion is not convincing, his opinion deserves no weight. This criterion should apply with greater force to opinions of non-experts." [146]

PAROLE EVIDENCE

When the terms of an agreement have 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 agreement other than the content of the writing. This general rule accepts of various exceptions: (1) where a mistake or imperfection of the writing is put in issue by the pleadings; (2) where there is an intrinsic ambiguity in the writing; (3) where the writing fails to express the true intent and agreement of the parties and this fact is pleaded; and (4) where the validity of the agreement is the fact in dispute.[147] Thus, the Parole Evidence Rule holds true only if there is no allegation that "the agreement does not express the true intent of the parties." If there is and this claim is put in issue in the pleadings, the same may be the subject of parole evidence. The fact that such failure has been put in issue in this case [148] is patent in the answer where the defendant has specifically pleaded that the contract of sale does not express the true

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[144] 20 Am. Jur. 634.
[145] Rule 123, Sec. 20, Rules of Court.
[146] Ng v. Republic, G.R. No. L-16302, Feb. 28, 1962.
[147] Rule 123, Sec. 22, Rules of Court.
[148] Enriquez *et al.* v. Ramos, G.R. No. L-18077, Sept. 1962.

intent of the parties with regard to the construction of roads. This case involved an action to foreclose a contract of sale with mortgage. The defense was that the contract does not express the true agreement of the parties because certain important conditions agreed upon were not included therein by the counsel who prepared the contract; that the stipulation omitted from the contract was the promise assumed by plaintiffs that they would construct roads on the lands which were to be subdivided for sale on or before January 1959; that said condition was not placed in the contract because, according to plaintiff's counsel, it was a superfluity inasmuch as there was an ordinance in Quezon City which required the construction of roads in subdivision before lots could be sold; and, that on the suggestion of plaintiff's counsel, their promise to construct the road was not included in the contract because the ordinance was deemed a part of the contract. Defendant also claimed that the purchase price of the sale was not ₱235,056.00 but only ₱185,000.00, the difference of ₱50,000.00 being the voluntary contribution of defendant to the cost of the construction of roads which plaintiff assumed to do as above-mentioned. Plaintiff however argued that there was no such oral agreement because all that was agreed on between the parties was already expressed and included in the contract of sale between the parties and since the defendant failed to pay the balance of the obligation within the period stipulated, the whole obligation became due and demandable thus giving the plaintiffs the right to foreclose the mortgage. The lower court held for the defendant. Appeal was made on the ground that the court erred in allowing the presentation of parole evidence to prove that a contemporaneous oral agreement was also reached between the parties as to the construction of roads. On appeal, the Court affirmed the decision of the lower court saying that the construction of roads was a condition precedent to the enforcement of the terms of the contract of sale particularly the foreclosure of mortgage because the subdivision regulation of Quezon City required as a matter of law that sellers of land therein be converted into subdivision lots must construct the roads in said subdivision before the lots could be sold. This requirement must have been uppermost in the mind of the parties in this case which led to the execution of the so-called "explanation" wherein it was stated that the sum of ₱50,000.00 was a contribution of defendant to the construction of roads which plaintiffs would undertake. This "explanation" was executed on the very day when the contract of sale was executed which also proves that the purchase price was not as appearing in the deed of sale. The Court added that the circumstances which lent cogency

to the defendant's claim that the commitment of plaintiffs to construct road was inserted because of assurance of counsel was that there was really an ordinance which required the construction of roads in a subdivision before the lots therein could be sold and considering that the assurance came from the very counsel who prepared the document who even intimated that the ordinance was part of the contract, defendant must have agreed to the omission relying on the good faith of plaintiffs and their counsel.

In *De Leon v. Emiliana Molo-Peckson* [149] however, the Court held unmeritorious the contention of the appellants that the document executed by them does not express the true and correct intent of the appellants regarding the verbal wish of their foster parents to convey, for a nominal consideration to the appellees, the ten parcels of land, considering the surrounding circumstances. The document was executed two years and six months after the appellants acquired title to the land by virtue of a donation *inter vivos* executed in their favor by their foster mother and six months after the death of the donor. There was nothing to cajole them to execute it and no constraining motive except that of their conscience to comply with the obligation asked of them. The acknowledgment signed by them stated that it was their own free act and deed. It is to be supposed that appellants understood the legal import of the document when they executed it because both of them had studied in reputable centers of learning, one being a pharmacist and the other a lawyer. The six months intervening between the death of the donor and the execution of the document gave them time to ponder on the importance of the wish of their predecessor-in-interest and also on the propriety of the putting in writing of the mandate.

QUANTUM OF PROOF

In case there is a conflict of evidence between the prosecution and defense in a criminal case, which version should be believed? This is the most common dilemma which confronts the Court. In one case,[150] the prosecution was believed because of the following reasons: (1) the witnesses were sincere and candid in their testimonies confirmed by their position in relation to the deceased; and (2) the improbability of the version of the defense that it was the decedent who made the attack, it being improbable that he would have received more serious injuries which is not the case herein. It is improbable that the deceased would have attacked the accused because the latter was bigger and armed with a bigger weapon. Also, the decedent was

[149] G.R. No. L-17809, Dec. 22, 1962.
[150] People v. Susukan, G.R. No. L-18030, Oct. 31, 1962.

a public school teacher and would not have provoked the fight. In another case,[151] in an application for bail, the Court held that Rule 123 Section 98 [152] is not decisive because it governs the quantum of evidence essential for conviction for which guilt must be established beyond reasonable doubt whereas to forfeit the constitutional right to bail in capital cases, it is enough that the evidence of guilt be strong. Thus the writ of certiorari to annul the order of the court and to secure the release of petitioner was denied.

In *People v. Arconada,*[153] after a plea of guilty and after proving the mitigating circumstances of minority, and voluntary surrender, the accused was not allowed by the trial court to prove sufficient provocation by the deceased. The motion for reconsideration to prove the other circumstances was denied because it would be tantamount to making the accused plead conditionally. The Court dismissed this holding of the lower court by saying that the rules of procedure were not designed to curtail the disclosure of the real fact especially of mitigating circumstances that may be applied. Although it is within the court's discretion to permit or not to permit the submission of evidence of the other circumstances after a plea of guilty, such is not absolute. If the court's discretion is absolute, no accused would be induced to enter a plea of guilty and thus abbreviate the proceedings. The Court remanded the case for further admission of evidence.

In naturalization cases, unlike in civil and criminal cases, although the applicant himself has testified to his absence of disqualification, the law requires that the petition should be supported by the affidavit of at least two credible witnesses, indicating that the sworn declarations of the applicant himself are not sufficient if standing alone. The case should apply with greater strictness in a case where because of the lack of declaration of intention excused by the presence of 30 years of residence, a thorough investigation of the petitioner's qualification was not made.[154]

In a civil case, in *Puzon v. Villamor,*[155] Puzon filed a complaint against Querubin to declare inexistent and void certain documents allegedly executed by Puzon in favor of Querubin. The lower court held it void and ordered Querubin to pay ₱10,000.00 with interest. During the pendency of appeal by Querubin, the fiscal filed an information for false testimony against Querubin because of the complaint filed by Puzon alleging that she falsely testified that Puzon

[151] Pareja v. Gomez, *supra,* note 105.
[152] *Supra,* note 106.
[153] G.R. No. L-16715, Feb. 28, 1962.
[154] Ng v. Republic, *supra,* note 146.
[155] G.R. No. L-13630, Feb. 28, 1962.

executed a document of sale of certain mineral claim and later filed and recorded the same with the office of the Mining Recorder of Naga City knowing said allegation to be false. In the course of proceedings of said case, the prosecution filed a motion to suspend the trial because the issue on which the defense was presenting evidence partakes of the nature of a prejudicial question which cannot be done because it is one of the issues involved in the appeal. The defense said that the presentation of evidence as to the existence of the document is an indispensable element to establish the innocence of defendant. The lower court held for the defendant. Thus this certiorari. The Court held that the defense must be allowed to present its evidence. It reasoned out that after the prosecution had presented evidence to prove the imputation in the charges, it is unfair if he would be deprived of an opportunity to prove it and establish her innocence. It is improper for the prosecution to ask for the suspension of the trial after having lodged the imputation and presented evidence for if in its opinion, the issue is prejudicial, it should not have filed the charge but waited for its termination in the Court of Appeals.

There is a cardinal rule with respect to quantum of evidence which has served in all ages and been applied to all conditions of men. That is, that a witness falsifying the truth in one particular, when upon oath, never ought to be believed upon the strength of his own testimony whatever he may assert. The reason is that once a person knowingly and deliberately states a falsehood in one material aspect, he must have done so as to the rest. But the rule has its limitation for when the mistaken statement is consistent with good faith and is not conclusively indicative of a deliberate perversion, the believable portion of the testimony should be admitted. Though a person may err in memory or in observation of one or more aspects, he may have told the truth as to the others. The rule thus should not apply where: (1) there was sufficient corroboration on many of the grounds of testimony; (2) mistakes are not on material points; and (3) errors did not arise from an apparent desire to pervert the truth but for innocent mistakes and the desire of the witness to exculpate himself though not completely. The requirements therefore of the rule are: (1) that the false testimony be on a material point; and (2) there should be a conscious and deliberate intention to falsify.[156]

In one case,[157] the contradictions in the narration of details of the witnesses were held inconsequential. They were such minor dif-

[156] FRANCISCO, *supra*, note 92, pp. 1150-52.
[157] People v. Bagsikan, *supra*, note 43.

ferences as would naturally arise from the truthful description of the past. Had there been flawless, complete and accurate narration, it would have been more suspicious that it was fabricated and rehearsed.