EVIDENCE

ARTURO V. PARCERO *
RODOLFO G. URBIZTONDO *

The search for truth has engaged the attention of men in every epoch of the world's history, and numerous have been the systems evolved for its ascertainment. As the social fabric has become more closely woven, the greater have been the efforts towards new discoveries. In none, perhaps, of the many objects and purposes of all investigation is society more interested than in those seeking a just determination of disputes and controversies between persons and body of persons. Little progress seems to have been made toward a peaceful solution of the difference of nations, but in respect of the individual, modern systems of judicial investigation have been accepted in almost every part of the world. Appertaining to every judicial system are rules of evidence. The word "evidence" in our legal acceptation, imports the means by which any matter of fact, the truth of which is submitted for investigation, may be established or disproved. Hence, a rule of evidence may be defined as a principle expressing the mode and manner of proving the facts and circumstances upon which a party relies to establish a fact in dispute in a judicial procedure.[1] Blackstone said in his Commentaries, "Evidence signifies that which makes clear or ascertain the truth of the very fact or point in issue, either in the one side or the other." [2]

All systems of the law consist of two parts, of which one is Substantive law and the other Procedure.[3] Again Procedure is composed of three grand divisions known respectively as Pleading, Practice and Evidence. The rules of evidence, then are part of the law of Procedure. These rules are found expressed in the Rules of Court, and in the mass of cases, for the most part decided in very recent years and comparatively few statutory enactments. Unlike most precepts of jurisprudence the bulk of these rules consist in declarations of what is not admissible in evidence. The principle that proof may be made of all matters relevant to the fact in issue is the affirmative doctrine to which all hese negations are opposed.

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[1] Rule 128, Section 1, REVISED RULES OF COURT provides: *Evidence defined*— Evidence is the means sanctioned by this rules of ascertaining in a judicial proceeding the truth respecting a matter of fact.

[2] III BLACKSTONE COMMENTARIES, 367.

[3] X RULING CASE LAW 860.

A general survey of this affirmative rule and its exception as enunciated by the Supreme Court in cases decided in 1963 is the scope of the present writing.

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.[4]

The basis of the rule is the maxim, *"manifesta non indiquent probatione."* (What is known may not be proved.) It assumes that the judge trying and deciding a case known or at the very least, is familiar with facts accessible to reasonably informed persons in the community. As our Supreme Court puts it in one case, "courts should take notice of whatever is or should be generally known because judges should not be more ignorant than the rest of mankind."

In the case of *Gallego v. People*,[6] the Supreme Court ruled that, there is nothing in the law that prohibits a court like the Court of Appeals from taking cognizance of a municipal ordinance. On the contrary, Sec. 1, Rule 129 of the Revised Rules of Court, enjoins courts to take judicial notice of matters which are capable of unquestionable demonstration.

And in *A. L. Amens Trans. Co. v. Del Rosario*,[7] the Court in reversing the findings of the Public Service Commission that applicant, del Rosario, has the required financial means or ability to establish the passenger line applied for, took judicial notice of the fact that trucks are very expensive and costly and to provide trucks of the necessary bodies and tires all of which are expensive, considerable capital is demanded.

DOCUMENTARY EVIDENCE

Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.[8]

A statement in writing made by a public official, qualified by observation and acting under a duty or authority to make statements

[4] 9 WIGMORE, Sction 2565; MCKELVEY, Section 13.
[6] G.R. No. L-18247, August 31, 1963.
[7] G.R. No. L-17992, August 30, 1963.
[8] Rule 130, Section 38, REVASED RULES OF COURT.

on the subject, is admissible without calling the official to the witness stand. His official statement untested by cross-examination is hearsay, but it is nevertheless admitted in evidence as an exception on two grounds: (1) necessity of the evidence lies in the impracticability of disrupting official business by constantly calling the recording official to attend court as witnesses, and (2) the special circumstance of trustworthiness lies in official duty, for this not only subjects this official to a penalty for misfeasance. These two arguments were conceded by the Supreme Court in the early case of Antillon v. Barcelon.[9]

Official documents fall into three groups, namely: (1) register of records, (2) returns and reports, and (3) certificates.[10] A register of records is a series of entries on related subjects, kept in official custody in connected shape. Whenever there is an official duty to do a thing, there is always an implied duty to keep the record of the thing done, hence the record is admissible, whether the duty arises expressly or impliedly.[11]

The two most important classes of records are records of marriages, births and deaths and records of deeds.

Generally, documentary evidence to be admissible must be competent and relevant to the issue involved in the case in which it is sought to be introduced, must be correct and genuine and must faithfully represent the contents purported to be included therein.[12]

Statements made in these records are only prima facie evidence may be brought to overcome its probative value.

While a public document is admissible without proof of its authentication and due execution, it is not a perfect document with respect to the truthfulness of the statements made therein.

In the case of *Abella v. Santiago*,[13] the court in affirming the lower tribunal's decision held that baptismal certificate do not constitute authentic document to prove the legitimate filiation of the children.

And in the case of *Buentifo v. Commissioner of Civil Service*,[14] the Supreme Court held that, "the documents in question, (examination papers, docket and service cards) are public records containing entries made by the officers of the Civil Service Commission in their capacities as such and in the ordinary course of business."

[9] 37 Phil. 148 (1917).
[10] II SALONGA, EVIDENCE 413.
[11] *Ibid.*
[12] People v. Durrant, 116 Cal. 179, 48 Phil. 75.
[13] G.R. No. L-16307 April. 30, 1963.
[14] G.R. No. L-19131, December 27, 1963.

PAROL EVIDENCE

The so-called "parol evidence" forbids any addition to or contradiction of the terms of the written instrument by testimony purporting to show that, at or before the signing of the document, other or different terms were orally agreed upon by the parties.[15]

In this jurisdiction the parol evidence rule is expressed as follows: "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 contents of the writing." [16]

The existence of a valid contract is of course, a condition precedent for the application of the rule. It is a principle that, "in order to exclude oral evidence of a contract it must be first established that there is a subsisting written contract between the parties, and where the immediate issue whether there is or was a writing covering the contract, it is not competent to exclude oral testimony bearing on that issue upon an assumption of such writing. To do so is to beg the question." [17]

The reason for the rule is that when the parties have reduced their agreement to writing, it is presumed that they have made the writing the only repository and memorial of the truth and whatever is not found in the writing must be understood to have been waived and abandoned except in cases therein specifically mentioned.[18]

The rule specifies the cases in which notwithstanding the writing executed by the parties, parol evidence is admissible to prove the terms of their agreement. Such exceptions are: (a) where a mistake or imperfection of the writing is put in issue by the party; (b) where there is an intrinsic ambiguity in the writing; (c) where the writing fails to express the true intent and agreement of the parties and this fact is pleaded; and (d) where the validity of the agreement is the fact in dispute.[19]

When one of the parties alleges that a certain writing fails to express the true intent and agreement of the parties parol evidence may be admitted by the trial court to ascertain their real intent.

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[15] Goldvand v. Allen, 245 Mass. 143, 139 NE 834. Lee v. Lempretch, 196 NY 32, 89 NE 365.
[16] Rule 130, Section 7, REVISED RULES OF COURT.
[17] JONES, EVIDENCE IN CIVIL CASES, 824 (2nd ed.).
[18] VanSyckel v. Dalrymple, 32 NJ Eq. 236.
[19] Rule 130, Section 7, REVISED RULES OF COURT.

In the case of *Land Settlement and Development Corp. v. Garcia Plantation Co.*,[20] the Supreme Court found an occasion to analyze and apply the foregoing rule and exceptions governing parol evidence.

This is a case for specific performance of a contract, instituted by a plaintiff, LASEDECO, against the defendants for the recovery of the unpaid balance of the purchase price of two (2) tractors bought by defendant Garcia Plantation Co. Inc., Salud Garcia was made alternative co-defendant because of two promissory notes executed by her, whereby she personally assumed the account of the Company with plaintiff. The defendants in their answer admitted the execution of the two promissory notes but contended that the same had been novated by the subsequent agreement contained in a letter (Exh. L) sent by Felomino Kintanar, Manager, Board of Liquidators of the LASEDECO, giving the defendant Salud Garcia an extension up to May 31, 1957 within which to pay the account and since the complaint was filed on February 20, 1957, they claimed that the action was premature and prayed that the complaint be dismissed. The plaintiff admitted the due execution and genuineness of the letter marked Exh. L, but it contented that the same did not express the true intent and agreement of the parties, thereby placing the fact in issue, in the pleadings. At the trial, the defendant admitted all the documentary evidence adduced by the plaintiff, showing that they were indebted to said plaintiff, LASEDECO. However, when plaintiff presented Atty. Lucido Guinto, Legal Officer of the Board of Liquidators, to testify on the true agreement and the intention of the parties at the time the letter (Exh. L) was drafted and prepared, the lower court upon objection of defendant ruled out said testimony and prevented the introduction of evidence invoking the parol evidence rule. Plaintiff also intended to present Mr. Kintanar, the writer of the letter, to testify on the same matter, but in view of the ruling of the court, it rested its case. The lower court dismissed the case stating that the action was pre-mature. Hence, plaintiff appealed alleging among others, ". . . (2) error in excluding parol evidence, tending to prove the true intention and agreement of the parties and the existence of a condition precedent, before the extension granted the defendants, contained in Exh. L, could become effective. . . .." In reversing the decision th Supreme Court held:

> "The lower court should have admitted the parol evidence sought to be introduced to prove the failure of the document in question to express the true intent and agreement of the parties. It should have not impro-

[20] G.R. No. L-1782, April 24, 1963.

> vidently and hastily excluded said parol evidence, knowing that the subject matter therein treated was one of the exceptions to the parol evidence rule."

When the operation of the contract is made to depend upon the occurence of an event which for that reason is a condition precedent, such may be established by parol evidence. This is not varying the terms of the written contract by extrinsic agreement for the simple reason that there is no contract in existence. There is nothing to which to apply the excluding rule.[21]

This rule does not prevent the introduction of extrinsic evidence to show that a supposed contract never become effective by reason of the failure of some collateral condition or stipulation, pre-requisite to liability.[22]

The rule excluding parol evidence to vary or contradict a writing does not extend so far as to preclude the admission of extrinsic evidence, to show prior or contemporaneous collateral parol agreements between the parties but such evidence may be received regardless of whether or not the written agreement contains reference to such collateral agreement,[23]

In the case of *LASEDECO v. Garcia Plantation Co.*,[24] reference is made of a previous agreement in the second paragraph of the letter, Exh. L, and although a document is usually interpreted in the precise terms in which it is couched, Courts,, in the exercise of sound descretion, may admit evidence of surrounding circumstances, in order to arrive at the true intention of the parties.[25]

"Had the trial court permitted, as it should, the plaintiff to prove the condition precedent for the extension of the payment the said plaintiff would have been able to show that because the defendants had failed to pay a substantial down payment, the agreement was breached and the contract contained in Exh. L, never become effective and the extension should be considered as not having been given at all. So that although the complaint was filed on Feb. 20, 1957, three months before the deadline of the extension on May 31, 1957, there would be no premature institution of the case."

ADMISSIONS

The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.[26]

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[21] Heitman v. Commercial Bank of Savanah, 6 Ga. App. 584, 65 SE 590. Cited in Moran, Comments on the Rules of Court, 1957 (Ed) 200.

[22] Peabody and Company v. Bromfield and Ross, 38 Phil. 841.

[23] Robles v. Lizzaraga Hermanos, 50 Phil. 387.

[24] *Supra* note 20.

[25] Aves and Alzona v. Orellinida, 70 Phil. 387.

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 acknowledgement he is legally bound. The acknowledgement may be written, oral or by conduct.[27]

There is a presumption that every man will so act as to protect his own interests, 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.[28]

Thus in the case of *Jabalde v. PNB*,[29] which was an action to recover ₱10,000.00 allegedly deposited by the plaintiff with defendant Bank, the issue of whether the Bank's failure to deny under oath the entries in the passbook as "copied" in the complaint constitutes an admission of the genuineness of the execution of the document, was raised. The Supreme Court ruled that: "ordinarily, the Bank's failure to deny the entries in the passbook as copied in the complaint is an admission. However, this rule cannot apply in the present case because the plaintiff introduce evidence purporting to support his allegations of deposit on the dates he wanted the court to believe and offered no objection during the trial to the testimonies of defendants' witnesses and documentary evidences showing different dates of deposit. By these acts the plaintiff waived the defendants technical admission through failure to deny the genuineness and due execution of the documents.

In *People v. Samson*,[30] the Court: there could be no better proof of marriage in a parricide case than the admission by the accused of the existence of such marriage.

CONSPIRACY

Under the Revised Penal Code, a conspiracy exists when two or more persons come to agreement concerning the commission of a felony and decide to commit it.[31]

Under the Rules of Court,[32] 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.

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[26] Rule 130, Section 22, REVISED RULES OF COURT.
[27] Chamberlayne, Section 482, Ency. of Evidence, 357.
[28] WIGMORE ON EVIDENCE, Section 180.
[29] G.R. No. L-18401, April 27, 1963.
[30] G.R. No. L-14110, March 29, 1963.
[31] Article 8, REVISED PENAL CODE.
[32] Rule 130, Section 27, REVISED RULES OF COURT.

This rule has a well-settled meaning in jurisprudence. It is one of the exceptions to the *res inter alios acta* rule. It refers to an extra-judicial declaration of a conspirator—not to his testimony by way of direct evidence.[33]

The above rule is founded in principles which apply to agencies and partnerships, for it is reasonable that where a body of men assumes the attribute of individuality whether for commercial business or for the commission of a crime, the association should be bound by the acts of one of its members in carrying out the design; and the legal principle governing in cases where several are connected in unlawful enterprise with reference to the common object is in the contemplation of law, the act or declaration of all.[34]

In order that the admission of a conspirator may be received against his co-conspirator, it is necessary that: (a) the conspiracy be first proved by evidence other than the admission itself; (b) the admission relates to the common object; and (c) the act or declaration has been made while the declarant was engaged in carrying out the conspiracy.[35]

Proof of Conspiracy.

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 not an easy task, and it may be extremely difficult to connect some parties to it. As correctly pointed out, this becomes acute in a mass trial, as many conspiracy trials are, where some defendants are clearly implicated in the confederacy and the others are not. Unless a co-conspirator turns state witness, the only other method open to prove conspiracy is circumstantial evidence.[36]

This is probably the reason for the statement that circumstantial evidence is much favored in conspiracy cases.[37]

For the same reason our Supreme Court has said time and again that in conspiracy, direct proof is not essential.[38]

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[33] Gardiner v. Magsalin, 40 O.G. 2471.

[34] 16 C.J. 644, 646.

[35] SALONGA, EVIDENCE 129.

[36] Livie, Hearsay and Conspiracy, 52 Mich. Law Rev. 1159, 1165.

[37] Eastern States Retail Lumber Dealer Association v. United States, 234 US 600, 43 S.Ct. 951; State v. Faillace, 134 Conn. 181, 56 (2nd ed.) 167.

[38] People v. Carbonel, 48 Phil. 686; People v. Ora Santos, 44 O.G. 1515; People v. Gingsain, G.R. No. L-4287, December 29, 1953; People v. Lingad, G.R. No. L-6989, November 29, 1955; People v. Garduque, G.R. No. L-10133, July 31, 1958; People v. Alfiler, G.R. No. L-10445, August 29, 1958; People v. Comma.., G.R. Nos. L-6652 and L-6654, February 28, 1958.

Thus in the case of *People v. Belen*,[39] the Supreme Court reiterated the above rule. Speaking through Justice Makalintal, the Court said:

> "Conspiracies need not be established by direct evidence of the act charged, but may be and generally must be proved by a number of indefinite acts, conditions and circumstances which vary according to the purpose to be accomplished. The very existence of a conspiracy is generally a matter of inference deduced from certain acts of the persons accused, done in pursuance of as apparently criminal or unlawful purpose in common between them. The existence of the agreement or joint assent of the minds need not be proved directly. It may be inferred from other facts proved. It is not necessary to prove that the defendants came together and actually agreed in terms to have the unlawful purpose and to pursue it by common means. If it be proved that the defendants pursued by their acts the same object, often by the same means, one performing one part and another part of the same, so as to complete it, with a view to the attainment of the same object, one will be justified in the conclusion that they were engaged in a conspiracy to effect that object. If, therefore one concurs in the conspiracy, no proof of agreement to concur is necessary in order to make him guilty. His participation in the conspiracy may be established without showing his name or giving his description."

In this case, conspiracy having been established, each of the statements is admissible against all the conspirators and each is responsible for the crime committed as a result.

Although circumstantial evidence, as stated, is favored by courts to prove conspiracy, owing to the difficulty of getting direct proof, conspiracy cannot be proved by hearsay evidence, for then the result would be double-decked hearsay; hearsay to establish the foundation for the admission of extra-judicial declarations which are in themselves hearsay. As stated by the United States Supreme Court, this would be nothing less than hearsay lifting itself "by its own bootstraps to the level of competent evidence."[40]

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 subject of inquiry, as evidence of the cause and surrounding circumstances of such death.[41]

Dying declarations are the statements made by a person after the mortal wound has been inflicted, under a belief that death is

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[39] G.R. No. L-13895, September 30, 1963.
[40] Glasser v. U.S. 315 US 60, 75 S.Ct. 457.
[41] Rule 31, Section 130, REVISED RULES OF COURT.

certain, stating the facts concerning the cause of, and the circumstances, surrounding the homicide.[42]

The general principle on which this species is admitted is that it is a declaration made in extremity when the party is at the point of death, and every hope of this world is gone; when every motive to falsehood is silenced and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so awful as to be considered by the law as creating an obligation equal to that which is imposed by a positive oath in a court of justice.[43] In addition to its presumed trustworthiness admission is likewise justified by necessity, the necessity for taking his only available trustworthy statements—his dying declaration. Necessity is based on the fact that the declarant is dead.[44]

It will thus be seen that because a dying declaration is pure hearsay but excepted by the rules, it should be received with caution, and only when they satisfy certain well-established and universally recognized conditions should they be admitted.[45]

The following conditions must, under the Rules of Court be satisfied: (1) that the declaration refers to the material facts which concerns the identity of the deceased or the accused and the cause and circumstances of the killing;[46] (2) that it was made by the declarant under the consciousness of an impending death;[47] (3) that it was made freely and voluntarily, and without coercion or suggestion of improper influence;[48] (4) that the declarant must be competent as a witness if he had been called upon to give testimony in court;[49] and (5) that the declaration is offered in a criminal case in which the death of the declarant is the subject of inquiry.[50] The fact of death is therefore essential.

In the case of *People v. Santok*,[51] a prosecution for homicide, the defense alleged that the conditions of Amando Fabul as he fell

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[42] WHARTON, CRIMINAL EVIDENCE 836 (11th ed.).

[43] U.S. v. Gil, 13 Phil. 530.

[44] 5 Wigmore, Section 1431; Tracy, 254; Greenleaf's Evidence contained an editorial note of Redfield, C.J., to the effect that necessity is found in the prevention and punishment of manslaughter, Section 156. Wigmore condemns this statement as an orthodox hearsay, responsible for the irrational limitations subsequently adopted by the courts.

[45] I JONES, EVIDENCE IN CIVIL CASES, 608.

[46] U.S. v. Montes, 6 Phil. 443; U.S. v. Palanca, 5 Phil. 269.

[47] People v. Tolledo and Timbre, G.R. No. L-1778, February 23, 1950.

[47] People v. Tolledo and Timbre, G.R. No. L-1778, February 23, 1950; People v. Muñoz and Andal, G.R. No. L-3396, April 18, 1951.

[48] People v. Muñoz, *supra*.

[49] ENCYCLOPEDIA OF EVIDENCE, 939.

[50] U.S. v. de la Cruz, 12 Phil. 87.

[51] G.R. No. L-18226, May 30, 1963.

wounded, after being shot in the umbilical region, was such that he could not have made the ante mortem declaration pointing to the accused as the offender. The Supreme Court in rejecting the theory of the defense said:

> "Although two doctors testified that because of the character or nature of the wounds sustained by the deceased which must have caused his immediate unconsciousness and rendered it impossible for Amando Fabul to reveal to his wife the name of defendant, as the aggressor, but no autopsy having been made by said physicians, they could have had no personal knowledge of the internal injuries of the deceased. Moreover, it was established by the testimony of Dr. Pedro Solis, a medico-legal officer of the NBI, that considering the location of the entry wound and its direction as described in the medical certificate jointly issued by tht said witnesses for the defense, despite the fact that they had not jointly examined the deceased, some of the major organs could not have been affected by the lethal pellet and Amando Fabul could have retained con. sciousness and his power of speech for sometime after he had been shot."

CIRCUMSTANTIAL EVIDENCE

Circumstantial evidence is that which relates to a series of other facts 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 satisfactory conclusion.[52]

Thus in *People v. Gongora*,[53] a prosecution for murder, the conviction of the defendants was based on the following facts: (1) the first is the undershirt with bloodstains on its front part by Cuaton's (Chief of Police of St. Bernard) men the following morning of the tragedy at the abandoned house of the Llurca where appellant had taken Isabel Cortez on her last night. The ownership of this undershirt was traced to appellant who gave the feeble excuse that in the early morning of June 25, his father went to the farm and nobody was there; (2) the second circumstance is the bloodstain found underneath appellant's thumbnail. His reaction on two occasions upon this piece of incriminating evidence tends to betray a guilty conscience. Before the bloodstain was extracted for analysis, the Chief of Police of Cabalan, Ananias Gloria, asked appellant if the latter butchered a pig or touched anything bloody within the week and appellant simply answered "No.". When Dr. Samaco removed the stain, appellant finally told Gloria that he butchered a pig that week and furthermore cut a fish which he had caught while fishing.

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[52] I JONES ON EVIDENCE, Section 6 (2nd ed.).
[53] G.R. No. L-140, July 31, 1963.

PRESUMPTIONS

Broadly stated, a presumption may be defined to be an inference as to the existence of one fact from the existence of some other fact founded upon a previous experience of their connection.[54]

Presumptions are indulged to supply the facts, they are never allowed against ascertained and established facts.[55]

There are two classes of presumptions: (a) presumption juris or of law, and (b) presumption hominis or of fact. A presumption of law is a rule of law announcing a definite probative weight attached by jurisprudence to a proposition of logic. It is an assumption made by the law that a strong inference of fact is prima facie correct, and will therefore sustain the burden of evidence, until conflicting facts on the points are shown.[56] On the other hand, a presumption of fact is that mental process by which the existence of one fact is inferred from proof of some other fact or facts with which experience shows it is usually associated by succession or coexistence.[57]

Presumption of law may either be conclusive or disputable; conclusive in the sense that they may not be rebutted by contrary proof, and disputable in the sense that they may be overturned by contrary proof.

A person accused of a crime is presumed to be innocent until the contrary is proved and this presumption remains with him throughout the trial until it is overcome by proof of guilt beyond reasonable doubt. The presumption of innocence is founded upon the first principle of justice and is not a mere form, but a substantial part of the law.[58]

The presumption of innocence is a conclusion of law in favor of the accused, whereby his innocence is not only established but continues until sufficient evidence is introduced to overcome the proof which the law has created—namely his innocence. When a doubt is created, it is the result of proof and not the proof itself. The court will not impute a guilty construction or inference to the facts when a construction or inference compatible with innocence arises therefrom with equal force and fairness. In fact, it is always the duty of a court to resolve the circumstances of evidence upon a theory of innocence rather upon a theory of guilt where it is possible to

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[54] I JONES, EVIDENCE, 13.
[55] Lincoln v. French, 105 U.S. 614, 26 L. Ed. 1189.
[56] 22 C.J. 124.
[57] U.S. v. Searcy, 26 Fed. 435.
[58] PHIL. CONST., Article III, Section 1 (17).

do so. The accused is not to be presumed guilty because the facts are consistent with his guilt; this will be done only where the facts are inconsistent with his innocence.[59]

In the case of *Cariño v. People*,[60] the accused was charged with the crime of rebellion with murders, arson, robberies and kidnapping for having agreed in conspiracy with 31 others for the purpose of overthrowing the government of the Republic. It appeared from the evidence, as found by the Court of Appeals, that the accused is a close friend of Dr. Jesus Lava (a top leader of the Communist party in the Philippines) and on several occasions gave Dr. Lava food and supplies he needed. At another time, accused Cariño helped a top level communist in changing the latter's $6,000 in pesos at the National City Bank of New York, where accused was employed. He also helped Huks to open accounts at the NCB of New York. In acquitting defendant, the Court held:

> "that appellant's work was a public relation officer of the Bank of which he was an employee and the work above indicated performed by him was part of his functions as an employee of the bank. These acts by themselves do not and cannot carry or prove any criminal intent of helping the Huks in committing the crime of insurrection or rebellion. The law is to the effect that good faith is to be presumed. No presumption of the existence of a criminal intention arises from the above facts which are in themselves legitimate and legal. Said acts are by law presumed to be innocent acts while the opposite has not been proved."

A court will not presume a state of facts injurious to fair dealing and common honesty.[61] *Odiosa et inhonesta non sunt in lege praesumaenda*, is a legal maxim; and Lord Coke says, that in an act that partaketh both of good and bad, the presumption is in favor of what is good, because odious and dishonest things are not to be presumed.

ALIBI

It is often said that alibi is one of the weakest defense since it can easily be manufactured. In a long line of recent cases,[62] our Supreme Court has consistently held that the defense of alibi cannot overcome the weight of positive testimony of prosecution witnesses where such testimony is natural, clear and convincing and more so when no motive has been shown on the part of said prosecution witnesses that would have prompted them to testify falsely. But, this is correct only where the defendant has been positively identified

[59] I WHARTON, CRIMINAL EVIDENCE, Section 72 (11th ed.).
[60] G.R. No. L-14752, April 30, 1963.
[61] X RULING CASE LAW, Evidence, 875.
[62] See Annual Survey on Evidence, PHIL. L. J., 1960, 1961, 1962.

by the testimony of reliable witnesses. Where there is no such clear identification and the testimony of the prosecution witnesses is open to grave doubts, the defense of alibi become stronger particularly if this is established by clear and satisfactory evidence.[63]

The alibi to be believed must show that it was physically impossible for the accused to be present in the scene of the crime.[64]

Applying this principle, the Supreme Court in the case of *People v. Ambran*,[65] a prosecution for murder the defense of alibi was ignored by the court. The court held:

> "It may be true that they had gone fishing or had gone to buy fish early in the morning, but this circumstances would not prevent them from being present at the place where Mangao was ambushed and killed which appears to be around a kilometer, more or less from the place where the fish is caught or bought or from the place where the defendants reside."

The general rule is that positive testimony as to the presence of the accused at the scene of the offense is stronger than negative testimony to the contrary.[66]

In the case of *People v. Capadocia*,[67] however, defense witnesses are positive that accused was at other places than that claimed by the prosecution and a good number of witnesses had no particular interest in the case. Besides, their testimonies were substantially corroborated by documentary evidence, consisting inter alia of receipts, bookkeeping entries, records of shipping companies and photographs in some of which public officers including an officer of the Constabulary who testified for the prosecution appear. Then, too, the number of witnesses—though not per se controlling or decisive is a factor that adds weight to the accused's alibi.

And in *People v. Aguilar*,[68] the Court in affirming the conviction of the defendant, denied the latter's defense of alibi. Said the Court: "On the strength of the positive identification corroborrated by the testimony of a neighbor who is a disinterested person, one can hardly argue that the defense of alibi set up by the appellant merits weight and consideration, more so when from the very testimony it appears that defendant's house where he allegedly was at the time of the incident was not so far a distant as would make physically impossible his presence at the place of the commission of the crime."

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[63] SALONGA, EVIDENCE 627 (1961 ed.).
[64] *Ibid.*
[65] G.R. No. L-15581, April 29, 1963.
[66] U.S. v. Bueno, 41 Phil. 447; People v. Borbano, 43 O.G. 478; People v. Gonzalez, 42 O.G. 3195.
[67] G.R. No. L-4907, June 29, 1963.
[68] G.R. No. L-19635, June 29, 1963.

But in the case of *People v. Yakan Malat*,[69] the Supreme Court ruled that even if true, the alibi can not prevail over the positive statement of eye-witnesses who identified the accused as the perpetrator of the crime. The same rule was applied in several cases decided by the court recently.[70]

COMPETENCY TO TESTIFY

The Rules of Court provides that:

> "Parties or assignor of parties to a case or persons in whose behalf a case is prosecuted against an executor or administrator or other representatives of the deceased person, or against the person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind cannot testify to a matter of fact occuring before the death of such person or before such person become of unsound mind." [71]

This is otherwise known as the survivorship disqualification rule. The object and purpose of this rule is to guard against the temptation to give false testimony in regard to the transaction in question on the part of the surviving party, and further to put the two parties to a suit upon terms of equality in regard to the opportunity of giving testimony. If one party to the alleged transaction is precluded from testifying by death, insanity or other mental disabilities, the other party is not entitled to the undue advantage of giving his own uncontradicted and unexplained account of the transaction.[72] As has been said in an American case, "if death has closed the lips of one party, the policy of the law is to close the lips of the other." [73]

The underlying principle of the prohibition and the reason for the same is to protect the estate from fictitious claims and to discourage perjury.[74]

It has been held that the incompetency of the claimant to testify under this inhibition may be waived. Thus in the case of *Asturias v. Miras*,[75] wherein a contract of sale with right of redemption executed by Miras in favor of the spouses Lauriano Asturias and Julia Orozco, (petitioners predecessors in interest) covering the land in question was declared one of mortgage with usurious interest and

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[69] G.R. No. L-15255, August 30, 1963.

[70] People v. Bumatay, G.R. No. L-16620, April 30, 1963; People v. Masias, G.R. No. L-19250, August 30, 1963; People v. Ramos, G.R. No. L-17402, August 31, 1963; People v. Moros Tanji Ambran, *supra;* People v. Aguilar, *supra.*

[71] Rule 130, Section 20, REVISED RULES OF COURT.

[72] McCarthy v. Wallstone, 210 App. Div. 152, 205.

[73] Chief Justice Brickle, Louis v. Easton, 50 Ala. 47

[74] Maralit v. Lardizabal, 54 Phil. 252.

[75] G.R. No. L-17895, September 30, 1963.

therefore null and void, the petitioner contended that the trial court and the Court of Appeals erred in admitting and giving credence to the oral testimony of plaintiff Miras tending to vary the terms of the pacto de retro sale, contrary to the survivorship disqualification rule. The court ruled: "that the contention of the petitioner that under the rule of survivorship disqualification, the testimony of respondent Miras, is inadmissible to vary the terms of the pacto de retro sale, is untenable because as found by the Court of Appeals, no timely objection has been made against the admission of such evidence."

WEIGHT OF TRIAL COURT'S FINDING ON THE EVIDENCE ON APPEAL

Appellate courts including our Supreme Court have time and again stated that where there is an irreconcilable conflict in the testimony, the trial courts finding will be sustained unless there appears on the record some facts or circumstances of weight and influence which has been overlooked or the significance of which has been misinterpreted.[76]

This is due to the fact that the trial court is undoubtedly in a better position to appreciate the evidence, the appearance, demeanor and manner of testifying of a witness can not be transcribed on the record; what the court on appeal reads are the "cold words of the witness as transcribed upon the record," and everyone knows that much of what was said "is always lost in the process of transcribing." [77]

This circumstance is considered by many as furnishing cogent inducement for trial courts to be ever circumspect and judicious in weighing the evidence of the parties, inasmuch as their findings are often times irreversible, even on the face of possible abuse of their descretionary powers.[78]

Thus in the case of *People v. Sarmiento*,[79] the Supreme Court reiterated the settled doctrine of non-interference with the intelligent and impartial conclusion of a trial court concerning the credibility of witnesses. The reason behind this doctrine is that the lower court is more in a position to determine how the witnesses react, having seen them in the act of testifying and having had an opportunity to observe their manner and demeanor as witnesses.

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[76] Lao v. Dir. of Lands, 43 O.G. 504; People v. Balines, G.R. No. L-9045, September 28, 1956; People v. Lardizabal, G.R. No. L-8944, May 11, 1956.

[77] Calvert v. Carpenter, 96 Ill. 63, 67.

[78] SALONGA, EVIDENCE 628.

[79] G.R. No. L-19146, May 31, 1963.

Generally appellate courts do not disturb the findings of trial courts as to credibility of witnesses.[80]

It is the peculiar province of the trial court to resolve questions as to the credibility of witnesses and unless the record discloses some facts or circumstances of weight or influence overlooked by by the court or its significance misunderstood, or the fact or circumstance misapplied or there is something in the record which by fair interpretation impeaches the resolutions of the trial court; the Supreme Court will assume that the court below acted fairly, justly and lawfully.

NEWLY FORMED EVIDENCE

The Rules of Court provides that:

> "Within the period for perfecting appeal, the aggrieved party may move the trial court to set aside the judgment and grant a new trial for one or more of the following cases, materially affecting the substantive rights of said party:
>
> . . .
>
> (b) newly discovered evidence, which he could not with reasonable diligence, have discovered and produce at the trial and which if presented would probably alter the result; . . .[81]

In the case of *People v. Curiano*,[82] a prosecution for murder, counsel for appellants submitted a motion for a new trial, based on newly discovered evidence, consisting of affidavits of appellant to the effect that only he and 3 others still at large were the real authors of the murder. In denying the motion the court held: "Evidence which merely seeks to impeach the evidence upon which the conviction was based, or retractions of witnesses, will not constitute grounds for new trial, unless it is shown that there is not evidence sustaining the judgment except the testimony of the retracting witnesses." [83]

The reason for this rule is that if new trial should be granted at every instance where interested party succeeds in inducing some

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[80] People v. Asis, 61 Phil. 384; People v. Garcia, 63 Phil. 296; People v. Masuri, 64 Phil. 757; People v. Rica, 27 Phil. 644; People v. Istoris, 53 Phil. 91; People v. Pico, 18 Phil. 549; People v. Catrera, 43 Phil. 82; People v. Remegio, 37 Phil. 599; People v. Maralit, 36 Phil. 155; People v. Ambrosio, 17 Phil. 295.

[81] Rule 37, Section 1.

[82] G.R. Nos. L-15256 and L-15257, October 31, 1963.

[83] U.S. v. Smith, 8 Phil. 674; U.S. v. Valdez, 30 Phil. 290; U.S v. Lee, 39 Phil. 466; U.S. v. Siquimoto, 3 Phil. 176; People v. Alfindo, 47 Phil. 1; U.S. v. Dacio, 26 Phil. 503; People v. Fallantes, 64 Phil. 527; People v. Gallenos, 61 Phil. 884; People v. Cu Unjieng, 61 Phil. 906.

of the witnesses to vary their testimony outside of court after trial, there would be no end to every litigation.[84]

It has been held that an affidavit, which a person convicted of a crime executed subsequent to his conviction, to the effect that another person, also convicted of criminal participation in the same offense, did not actually take part therein, furnishes no ground for a new trial.[85]

And it is unnecessary to grant a new trial when there is no assurance that the witness to be introduced could not have been presented at the original hearing; and his testimony will materially improve defendant's position.[86]

In the case of *People v. Farol*,[87] the Court declared the following doctrine:

> ". . . resort to the use of affidavits of recantation is becoming rather common. Appellate courts must therefore be wary of accepting such affidavits at their face value, always bearing in mind that the testimony which they purport to vary or contradict was taken in an open and free trial in the courts of justice and under conditions calculated to discourage and forestall falsehood. Those conditions being as pointed out in the case of U.S. v. Dacir, 26 Phil. 507, that such testimony is given under the sanction of an oath and of the penalties prescribed for perjury; that the witness story is told in the presence of an impartial judge in the course of a solemn trial in an open court; that the witness is subjected to cross-examination, with all the facilities afforded thereby to test the truth and accuracy of his statements and to develop his attitude of mind towards the parties, and his disposition to assist the cause of truth rather than to further some personal end; that the proceedings are had under the protection of the court and under such conditions as to remove so far as is humanly possible, all likehood that undue or unfair influences will be exercised to induce the witness to testify falsely; and finally that under the watchful eye of a trained judge his manner, his general bearing and demeanor and even the intonation of his voice often unconsciously disclose to the degree of credit to which he is entitled as a witness."

Unless there be special circumstances which, coupled with the retraction of the witness really raise a doubt as to the truth of the testimony given by him at the trial and accepted by the trial judge, and only if such testimony is essential to the judgment of conviction so much so that its elimination would lead the trial judge to a different conclusion, a new trial based on such retraction would not be justified. Otherwise there would be no end to a criminal litigation and the administration of justice would be at the mercy of the criminals and the unscrupulous.

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[84] People v. Reyes, 71 Phil. 598.
[85] U.S. v. Smith, *supra*.
[86] People v. Torres, 73 Phil. 107.
[87] G.R. Nos. L-9423 and L-9424, May 30, 1958.

HEARSAY EVIDENCE IN ADMINISTRATIVE PROCEEDINGS

In *Suarez v. Judge of CFI of Rizal*,[88] it appears that petitioner and respondent Corporation were bidders in a timber concession in Labason, Zamboanga del Norte. The Director of Forestry granted the concession to respondent Corporation which was later affirmed by the Secretary of Agriculture and Natural Resources. However, the President of the Philippines acting through the Executive Secretary reversed the decision of the Secretary of Agriculture. Thereupon, the respondent Timberman Corporation filed in the CFI of Rizal against the Executive Secretary, Secretary of Agriculture, Director of Forestry and petitioner Suarez, a petition for certiorari and/or prohibition with preliminary injunction claiming that the decision of the President was rendered with grave abuse of descretion amounting to lack or in excess of jurisdiction because it was based on hearsay evidence consisting merely of affidavits of several individuals. In disposing of this issue the Court held: "that the nature, competency and weight of such evidence to support the administrative decision complained of should be passed upon only after hearing. In the meantime, the matter should be left to take its cause in the administrative sphere, and the interposition by the respondent court of its judicial power to check or alter that cause is premature and constitute a grave abuse of descretion."

EVIDENCE IN ADMINISTRATIVE AGENCIES

As a rule, the Court of Industrial Relations in the hearing, investigation and determination of any question or controversy and in exercising its duties and power under C.A. No. 103, is not bound by any technical rules of evidence, but may inform its mind as it may deem just and equitable.[89]

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[88] G.R. No. L-19828, February 28, 1963.

[89] Magdalena Estate Inc. v. Kapisanan Ng Mga Manggagawa sa Magdalena Estate Inc., G.R. No. L-18336, May 31, 1963.