

**CARMEN YTURRALDE AND CONSUELO G. AZURIN, ACCOMPANIED  
BY HER HUSBAND, DR. RAYMUNDO AZURIN,  
PLAINTIFFS-APPELLEES, VS. MARIANO VAGILIDAD AND LUZ  
MANAGUIT, DEFENDANTS-APPELLANTS.**

*G.R. No. L-20571. May 30, 1969*

Ponente: SANCHEZ, J.

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**SANCHEZ, J.:**

Prime objective of plaintiffs' complaint is to nullify the real estate mortgage on certain parcels of land - covered by Original Certificates of Title Nos. 739, 742, and 743 - located in Sibalom, Antique, allegedly executed by plaintiff Carmen Yturralde in favor of defendant spouses Mariano Vagilidad and Luz Managuit. Plaintiff Carmen Yturralde is the donor and plaintiff Consuelo G. Azurin, the donee of said parcels of land, amongst others, by a deed of donation claimed to have been executed prior to the real estate mortgage afore-said.

The history of this case may be traced as follows:

Carmen Yturralde was the owner of ten (10) parcels of land of the Sibalom Cadastre, Antique, viz: Lots 1000, 1002 and 1004 covered by Original Certificate of Title 739; 1/3 share of Lot 45, Original Certificate of Title 740; Lots 756 and 765, Original Certificate of Title 741; Lot 7354, Original Certificate of Title 742; Lot 977, Original Certificate of Title 743; and Lots 385 and 419, Original Certificate of Title 744.

On December 10, 1955, Carmen Yturralde executed in favor of Consuelo G. Azurin a notarial deed of donation inter vivos covering all the aforementioned lots, acceptance of which was also set forth in the same document.

For purposes of registration of the deed of donation, Consuelo asked Carmen where the titles were. She was referred to Carmen's elder brother, Cipriano, who informed Consuelo that the titles were in the possession of the defendants Vagilidad and Managuit. The Azurins learned that Cipriano Yturralde was indebted to the Vagilidades. Together with Cipriano, Consuelo G. Azurin went to defendants on December 18, 1955 and asked for the certificates of title. Defendants refused to deliver them. Reason for refusal was that it was Carmen Yturralde who owed them money and they would part with the titles only when they were paid. On January 8, 1956, Consuelo G. Azurin, accompanied by Agripina Sabrine, made another effort to procure the titles, but it was again in vain. Towards the end of January 1956, plaintiff Raymundo Azurin himself requested for the return of the titles. He was also rebuffed. In all of those visits, defendants were made to understand that the titles were needed to enable Consuelo to register the donation in her favor.

On July 2, 1956, plaintiff Consuelo G. Azurin was forced to go to the cadastral court (Cadastral Case No. 24, G.L.R.O. Rec. 1232) with a prayer that defendants be compelled to surrender the Torrens titles to the lands donated.[1] Because of the court's order of July 10, 1956 directing defendants to surrender the titles to therein petitioner Consuelo G. Azurin within five days, the titles were finally turned over to plaintiffs. Those titles were cancelled, and new transfer certificates of title were issued in the name of Consuelo G. Azurin.

It was at the hearing of the petition of plaintiff Consuelo G. Azurin for the surrender of the titles that plaintiffs first learned that there was a mortgage allegedly executed on February 14, 1956 by Carmen Yturralde in favor of defendant Mariano Vagilidad covering some of the lands donated, namely, those described in Original Certificates of Title 739, 742 and 743, and annotated at the back thereof on March 2, 1956. These mortgage annotations, therefore, also appear at the back of Consuelo's titles issued in lieu thereof.

On December 29, 1956, the donor Carmen Yturralde, the donee Consuelo G. Azurin, assisted by her husband Raymundo Azurin, commenced the present suit against defendant spouses Mariano Vagilidad and Luz Managuit to annul the real estate mortgage.[2] They averred that without the knowledge and consent of Carmen Yturralde, defendants came to possess Original Certificates of Title 739, 742 and 743 and fraudulently brought about the false execution of the mortgage aforesaid in their effort to collect money due them by way of loans extended to Cipriano Yturralde, brother of Carmen; that plaintiff Carmen Yturralde had absolutely nothing to do with said loans.

The gist of defendants' answer and amended answer was that the mortgage was executed as security for loans granted Carmen Yturralde on various occasions. It was in the second amended answer that for the first time defendants alleged that the donation relied upon by plaintiffs, the Azurins, was made in fraud of creditors.

While the trial was going on, that is, on February 12, 1960, plaintiffs' counsel filed a notice of death of party. Counsel informed the court that plaintiff Carmen Yturralde died on January 23, 1960, and proposed that Cipriano Yturralde, Carmen's brother and the nearest of kin, be substituted as party-plaintiff in place of the deceased Carmen Yturralde.

A hitch developed when, on August 17, 1960, this same Cipriano Yturralde lodged a complaint against herein plaintiffs Consuelo G. Azurin and Raymundo Azurin docketed as Civil Case 207 of the Court of First Instance of Antique[3] praying that the December 10, 1955 deed of donation heretofore mentioned be declared null and void.[4] With this development, we find defendants' counsel joining plaintiffs, by motion of September 5, 1960, in the substitution of Cipriano Yturralde as party-plaintiff in place of the deceased Carmen Yturralde. It was plaintiffs' turn now to object to the substitution of Cipriano Yturralde upon the averments that there was no conflict of interests between surviving plaintiffs and Cipriano Yturralde before the death of plaintiff Carmen Yturralde, but that after the death of the latter, Cipriano Yturralde filed the suit aforesaid to annul the donation; that for this reason, he is not the ideal person to substitute for the late Carmen Yturralde; that since Carmen Yturralde in her lifetime had already donated her properties, the proceedings in this case could continue without the need of having Carmen Yturralde substituted as plaintiff. In its order of September 30, 1960, the court ruled that there was no necessity for substitution and denied defendants' motion of September 5, 1960.

After trial on the merits, the court rendered its judgment of July 6, 1962 declaring null and void the deed of mortgage dated February 14, 1956 as well as the registration of said document in the Office of the Register of Deeds of Antique, and the annotation thereof as an incumbrance on O.C.T. Nos. 739, 742 and 743 and on T.C.T. Nos. N-2692, N-2693 and N-2694, all of the land records of Antique; directing the Register of Deeds of Antique to cancel said incumbrance on said certificates of title; and ordering the defendants to pay plaintiffs P500.00 as attorneys' fees, and the costs.

Defendants appealed direct to this Court.[5]

1. The threshold question defendants' brief presents is the trial court's denial of their motion to have Cipriano Yturralde substituted for the deceased Carmen Yturralde as co-plaintiff.

The power of a court to drop or add parties to an action "on motion of any party or on its own initiative at any

stage of the action and on such terms as are just" is recognized by Section 11, Rule 3, both of the old and the new Rules of Court. The problem before us, therefore, turns upon the question of whether or not the plaintiffs Azurin may prosecute the complaint by themselves, independently of the deceased Carmen Yturralde.

It is elementary in law and jurisprudence that an action for annulment of a contract "may be instituted by all those who are thereby obliged principally or subsidiarily." [6] Upon the other hand, it has also been said that the nullity of a deed or contract may be taken advantage of only by persons who bear such relation to the contract that it interferes with their rights and interests. [7] It is likewise the jurisprudence of this Court that a "person who is not a party obliged principally or subsidiarily in a contract may exercise an action for nullity of the contract if he is prejudiced in his rights with respect to one of the contracting parties, and can show the detriment which would positively result to him from the contract in which he had no intervention." [8]

In reality, the deceased Carmen Yturralde had no material interest in the suit, for the reason that she had already parted with the ownership of the properties involved. By joining as plaintiff, Carmen Yturralde in effect confirmed the deed of donation and, consequently, the right claimed by the Azurins to clear their title to the properties of the mortgage allegedly executed by Carmen Yturralde in favor of said defendants. It is in this posture that we say that the substitution of the deceased Carmen Yturralde has no bearing on the issues in the case brought by plaintiffs against defendants.

It is the Azurins whose title to the properties is directly affected by, the real estate mortgage. As a real right, a recorded mortgage follows the property whoever is the owner. As successors-in-interest of Carmen Yturralde, the Azurins are certainly prejudiced by the existing mortgage annotated on their titles which were issued to them upon registration of the donation in their favor. As long as the mortgage remains unannulled, the Azurins are bound to pay the mortgage debt and its interests or face foreclosure of the mortgage.

There is thus no other conclusion than that the Azurins are the real party-plaintiffs in interest who can go forward with the present complaint.

Besides, Cipriano Yturralde is certainly not a proper person to be joined as co-plaintiff. By his complaint in Civil Case 207, he has truly assumed a position inimical to plaintiffs, the Azurins, and the deceased Carmen Yturralde, in his attempt to impugn the deed of donation. Indeed, he wants the properties involved for his own upon the averment that he is the legal heir of the deceased Carmen Yturralde. In fact, he (Cipriano Yturralde) testified in this case for defendants to sustain the validity of the mortgage. Correctly then did the lower court say in its order of September 30, 1960 that: "We cannot have two plaintiffs maintaining diametrically opposite views."

Furthermore, the non-substitution at best is a harmless error which "does not affect the substantial rights of" defendants. [9] They have no cause for complaint.

2. Defendants next protest that in the resolution of the dispute, the court below did not find it necessary to pass upon the validity of the donation made by Carmen Yturralde over her properties in favor of Consuelo G. Azurin. The lower court's expressed view is that such "is not necessary for the determination of the case". More important still is that, in the lower court's opinion, "that question is now in issue in Civil Case No. 207 of this Court (Exh. 2) and will there be decided." Parenthetically, Civil Case 207, as heretofore mentioned, is a suit filed by Cipriano Yturralde, brother of Carmen Yturralde, against herein plaintiffs, the Azurins, to annul the donation. As previously stated (footnote 4), plaintiff, the defeated party, brought that case before us on appeal in G.R. L-22158.

We perceive of no legal right on the part of defendants to assail the validity of the donation. Valid or void, the donation would not affect their real right as mortgagees, which attaches to the properties independent of whether the owner thereof be the deceased Carmen Yturralde or the present plaintiffs. And this, on the assumption that

their mortgage is valid. They may not seek the annulment of the donation because they cannot show prejudice to them resulting from said donation in which they had no inter-vention.[10]

Nor can defendants ask the courts to strike down the donation as having been executed in fraud of creditors. That donation cannot defraud, much less prejudice, defendants in any way.[11] They are secured by the registered mortgage.

More on this point. The original and amended answers did not assail this donation. It was only in the second amended answer that defendants charged that such donation was contrived to defeat the creditors of Carmen Yturralde, amongst whom were defendants.[12] In spite of this specific allegation, no evidence at all was presented by defendants to prove that the deed of donation was a document the execution of which was tainted with fraud. Since the deed of donation is a public document, it enjoys the presumption of validity. It is evidence even as against third persons of the fact which gives rise to its execution and of the date of the latter.[13]

3. The preliminary questions disposed of, we now go to the meat of the case. Defendants decry the finding below that the deed of mortgage of February 14, 1956 is null and void. A question of fact is here involved.

Plaintiffs' evidence, as testified to by two maids, Flora Garcinela and Angelica Presente, shows the following: About the middle of February 1956, defendant Luz Managuit, a niece of Carmen Yturralde, went to the house of the latter sometime after lunch with a piece of cake. Luz prevailed upon Carmen to eat it. After Carmen did, she fell asleep. She was still asleep when suppertime came. Not long after 10:00 o'clock p.m., when the maids retired, Flora heard someone open the door. She saw Luz enter and approach Carmen's bed with a bundle of papers. Luz got hold of the right hand of Carmen, applied something to the thumb and pressed said thumb to the papers she brought with her. Luz then folded the papers again. When she was about to leave, Flora inquired from her as to what she did. Luz answered: "Just keep quiet, you have nothing to do with it." Flora woke up her husband and Angelica, and told them what Luz did. Flora and Angelica went to Carmen. When they saw that her thumb was stained with ink, they washed her thumb because she might get angry when she would wake up. Carmen slept through it all.

The lower court came to the conclusion that the papers Luz brought with her could have been no other than the mortgage papers. A meticulous dig into the evidence by His Honor, Judge Juan de Borja, the trial judge, is reflected in his findings, as follows:

"From the evidence of the defendants themselves, it has been established that the defendants loaned money and goods to Cipriano Yturralde and not to Carmen Yturralde. This is evident from the 'vales' Exhibits G, G-1, G-2 and G-3 which are all signed by Cipriano as well as from Exh. H where it appears that the rest of the 'vales' were also signed by him. This fact makes understandable the reluctance of Luz Managuit to produce said 'vales' in Court. She at first denied that she had them, saying that they have been lost. When she was finally cornered in cross-examination into admitting that she had the receipts and was then ordered by the Court to produce them, she brought only these four receipts and claimed she could not find the rest.

Luz Managuit and Cipriano Yturralde sought to explain the latter's signatures on the receipts by stating that Cipriano was authorized by Carmen to secure the loans from the defendants.[14] Carmen's circumstance in life does not indicate that she needed any loan of money or goods to maintain herself. According to the defense witnesses themselves, Carmen received 252 cavanos of palay and 20 cavanos of mongo yearly from her lands, and a monthly pension of P65.00 from the U.S. Government. She had nobody but herself to support. She lived frugally. It was not shown that her illness was such as to require expensive treatment or medication. Surely she could not have spent all her income and ran up an indebtedness of P2,000.00 yearly besides.

There is evidence in the record that Cipriano Yturralde is somewhat of a prodigal or wastrel. Susana Duatin testified that he owed several people money, including herself. An examination of the 'vales' of Cipriano in

favor of Susana Duatin (Exhs. D, D-1 to D-5) seems to support this view. The 'vales' are each for five cavanos of palay taken successively on March 8, 1955, March 23, 1955, April 2, 1955, April 4, 1955, April 13, 1955, and July 23, 1955. It will be noted that he took a total of 30 cavanos within a period of hardly more than four months, 15 cavanos of which were between April 2 and April 13, 1955, or only 11 days. Carmen and Cipriano, and their household help, could not have eaten or needed 7 1/2 cavanos of rice during that period. The only conclusion is that Cipriano must have taken the loan either in palay or in money and used it for his own purposes.

While it is true that Cipriano was the one who owed the money to the defendants, it may still be possible that Carmen, out of love for her brother had agreed to shoulder payment of the debt. However, the defendants did not allege this matter in their answer and their evidence did not touch on that point. Their theory is that it was Carmen who contracted the obligation. But even this possibility was met by the evidence of the plaintiffs, thru the testimony of Susana Duatin, that she heard Luz try to collect from Carmen the indebtedness of Cipriano, and Carmen angrily refused.

It is against this background that the Court has to inquire into and determine what were the true circumstances that attended the preparation and execution of the deed of mortgage. The plaintiffs claim, thru the testimony of Flora Garcinela and Angelica Presente, that Luz Managuit<sup>[15]</sup> approached Carmen while the latter was asleep and impressed her thumb on the pages of a document that Luz had with her. The defendants maintain, thru the testimony of Luz herself, that the document was signed by Carmen voluntarily in the presence of Atty. Novisteros, Atty. Valente and the instrumental witnesses Felix Sabrine and Jesus Morales. It is also claimed by the defendants that even admitting the testimony of Flora and Angelica, there is no evidence that the papers carried by Luz were the document of mortgage. There is no merit to this claim, since this is the only document that bears the thumbmark of Carmen dated February of 1956, and if Luz had caused Carmen's thumbmark to be placed on document in that month, it can be no other than this one.

The Court finds the narration made by Flora and Angelica clear and believable. They both appeared untutored, and could have been easily disconcerted if their stories were only made up. But they gave the impression of telling the truth. The defense tried to discredit their testimony by evidence that they did not live with Carmen as claimed by them. This evidence consists of a group picture of the members of Carmen's household (Exh. 7) in which Flora and Angelica do not appear, and of the testimony of Crisanto Basañez and Carlos Sasi, barriomates of the two, who said that Flora and Angelica were both living in their respective barrios in February of 1956. Said evidence is not convincing. It was shown that the picture was taken in 1953 or 1954, long before Flora and Angelica came to live with Carmen, and they could not therefore have been included in the picture. As to the testimony of Crisanto Basañez and Carlos Sasi, the Court does not find the same worthy of credit. It could have been possible for them to remember in 1961, when they gave their testimony, whether or not a particular barriomate was in the barrio in the month of February, 1956.

The testimony of Luz Vagilidad, on the other hand, was characterized by demonstrated falsehoods, inconsistencies, and improbabilities. Her initial refusal to produce Cipriano's 'vales' has already been mentioned. She claimed that the deed of mortgage was prepared by Atty. Novisteros in the house of Carmen on February 14, 1956, the same day it was signed. If this was true, then Atty. Novisteros should have typed the date and place of execution along with the rest of the document. But the spaces for these particulars were left in blank, which can only indicate that the document was prepared at some other time and place.

Luz' testimony about the execution of the document was uncorroborated. Neither Atty. Novisteros nor Atty. Valente nor the two instrumental witnesses to the execution of the document were presented, although the evidence for the plaintiffs placed in issue the due and regular execution of the document. The defendants' failure to call any of these persons to testify is considered by the Court most significant,<sup>[16]</sup> and leads it to believe that said document was irregularly executed.

The Court finds the supposed deed of mortgage void because: (1) There was no consent on the part of Carmen

Yturalde, her thumbmark on the document having been placed thereon while she was asleep (Art. 1319, New Civil Code); and (2) It was not shown that the terms of the document were fully explained to her when it was executed, it being incumbent upon the defendants to show this since Carmen Yturalde was illiterate and could not even sign her name (Art. 1332, New Civil Code)."[17]

A rule long familiar is that appellate courts, when faced with a conflict of testimony, are bound to sustain the lower court's findings on the evidence unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted[18] or unless some conclusion established from the facts is inconsistent with the court findings or there is some inherent weakness in the evidence upon which the conclusion is based.[19] And this is because the trial judge is unquestionably in a superior position to, gauge the credibility of those who take the witness seat before him, He has the opportunity to size up the appearance, the demeanor, the manner of testifying, the probability or improbability of the testimony, of the witnesses. Indeed, the trial court has a first hand advantage to assess the value to be given the testimony of a witness.

At this distance, we find ourselves unwilling to say that we are better prepared to ascertain the relative weight to be given the testimony of those who appeared and testified in the court below. We have nothing before us but the cold words written into the transcript. It is in this context that we say that we cannot downgrade the findings of the lower court just quoted. Our review of the record does not yield any cause or reason why we should overturn the said findings.

More than these, the facts and circumstances spread over the record plainly and manifestly demonstrate a pattern of conduct on the part of defendants aimed at assuring themselves of payment from the deceased Carmen Yturalde for debts incurred by the latter's brother, Cipriano Yturalde. The receipts of indebtedness produced in court (Exhibits G, G-1, G-2 and G-3) all show that the different vales on different occasions during the year 1954 were signed by Cipriano Yturalde in favor of defendants. The minutes of the court's session of July 10, 1956 in the cadastral proceedings (Exhibit H) to procure surrender by defendants to plaintiffs of the Torrens titles list 46 vales signed by Cipriano Yturalde for the period from March 17, 1953 to January 11, 1955.

There is no question in our mind that defendants knew of the donation executed by Carmen Yturalde in favor of Consuelo G. Azurin before February 14, 1956, the date of the mortgage allegedly executed by Carmen Yturalde in favor of defendants. By Cipriano Yturalde's own admission, as he testified for defendants, he had no means of livelihood as he was jobless. He confessed that he transferred all of his properties to Vicente Grasparil, who was the brother-in-law of defendant Luz Managuit. Carmen Yturalde adamantly refused to pay her brother's debt to defendants. The following testimony of Susana Duatin, another creditor of Cipriano Yturalde, speaking of her conversation with Mariano Vagilidad in January of 1956, is illuminating:

"Q Do you have any conversation with Mariano Vagilidad at that time?

A Yes, sir.

Q What did you talk about?

A When I came up the house Mariano Vagilidad asked me, Susing, what shall we do? I answered him, what shall we do because according to Carmen Yturalde she already donated her properties to Mrs. Azurin.

Q And then what did Mariano Vagilidad say if he said anything more?

A He said that, I let Cipriano indebted to me [sic] because we thought we could acquire the land of Yturaldes."[20]

It is but natural that defendants should look up to someone from whom they could recoup their impending losses.

It is in this environment that the mortgage now disputed came about. We are constrained to state that on the face of the record, plaintiffs have made out a case of fraud by evidence clear, convincing and more than merely preponderant.[21] This evidence overcomes the known presumption *fraus est odiosa et non praesumenda*.

For the reasons given, the judgment under review is hereby affirmed.

Costs against defendants-appellants.

**SO ORDERED.**

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.  
Concepcion, C.J., and Ruiz Castro, on official leave.  
Zaldivar, J., did not take part.

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[1] Exhibit B.

[2] Civil Case 779, Court of First Instance of Antique (San Jose), entitled "Carmen Yturralde and Consuelo G. Azurin, accompanied by her husband Dr. Raymundo Azurin, Plaintiffs, versus Mariano Vagilidad and Luz Managuit, Defendants."

[3] Entitled "Rev. Cipriano Yturralde, Plaintiff, versus Dr. Raymundo Azurin, Mrs. Consuelo G. Azurin, R.F.C. now Development Bank of the Philippines and Register of Deeds of Antique, Defendants."

[4] The complaint having been dismissed in the Court of First Instance of Antique after trial on the merits, this case was appealed to this Court by plaintiff therein, Cipriano Yturralde, and docketed as G.R. L-22158.

[5] R.A., pp. 192-193.

[6] Article 1397, Civil Code; Ong vs. Jariol, 17 Phil. 244, 251; Wolfson vs. Estate of Martinez, 20 Phil. 340, 344; Concepcion vs. Sta. Ana, 87 Phil. 787, 792; Armentia vs. Patriarca, 18 SCRA 1253, 1257.

[7] Cook vs. McMicking, 27 Phil. 10, 12; Lim vs. Dee Hao Kim (unreported), 102 Phil. 1171, 1172.

[8] Teves vs. PHHC (1968), 23 SCRA 1141, 1147-1148, citing Ibañez vs. Hongkong and Shanghai Bank, 22 Phil. 572, 584-585

[9] Section 5, Rule 51, Revised Rules of Court.

[10] Teves vs. PHHC, *supra*.

[11] Article 1381, Civil Code, provides: "The following contracts are rescissible: x x x (3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them; x x x." Emphasis supplied.

[12] See: R.A., pp. 45, 78 and 107.

[13] Section 24, Rule 132, Revised Rules of Court.

[14] We read from the transcript the following given on cross-examination by witness Cipriano Yturralde, testifying for the defense:

**"ATTY. ZALDIVAR**

Q When you contracted this alleged amount of four thousand for Carmen Yturralde according to you from the spouses Mariano Vagilidad and Luz Vagilidad, was there any document made or was there any writing evidencing that indebtedness?

A None.

Q You mean to tell the Court that in the year 1954, the spouses Mariano Vagilidad and Luz Vagilidad gave you four thousand pesos indebtedness without any paper, without any writing that that amount was borrowed?

**ATTY. MERCADO**

That is misleading, the witness did not state that four thousand was in cash but those were the goods and cash taken from the store of the Vagilidad.

**COURT**

Witness may answer.

A Yes, sir.

**ATTY ZALDIVAR**

Q Did you get that amount all in one occasion in 1953?

A Several times. Those were spent for the schools because there were two who were studying in Iloilo. She spent for somebody there, someone in Bugasong also asking money, also for the payment of medicines, hilot and spending for Tonguia who got first in the examination.

Q My question was, when you got the amount, let us say, the total amount of four thousand pesos, was there any writing or document to show that you got this amount of four thousand?

A Only trust and confidence. They did not ask for any sheet of writing. Later I left for Manila. I never mind because Dr. Azurin was already the administrator.

Q In 1954, you got money from the spouses and no writing nor promissory note nor vale were made?

A No, sir. I cannot remember. When the amount reached four thousand pesos, we continued to get from the spouses Mariano and Luz Vagilidad until the amount reached six thousand pesos," Tr., Hearing of March 13, 1961, pp. 23-25; emphasis supplied.

But see: Exhs. G, G-1, G-2, G-3 and H.

[15] Our note: Luz Managuit testified on cross-examination that Carmen Yturralde "was my aunt because she was the second cousin of my father" Procopio Managuit. Tr., July 28, 1961, pp. 188-189.

[16] On this point, see Section 5(e), Rule 131, Revised Rules of Court, which reads:

"SEC. 5. Disputable presumptions. -The following pre-sumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x

(e) That evidence willfully suppressed would be adverse if produced;

x x x”

[17] Emphasis supplied.

[18] Salonga, Philippine Law on Evidence, 1964 ed., pp. 781-782, citing *Se La O vs. Director of Lands*, 43 O.G. 504 (1947); *People vs. Masin*, 64 Phil. 757 (1937); *People vs. Cabrera*, 43 Phil. 64 (1922); *Salmon Dexter & Co. vs. Wijangco*, 46 Phil. 386 (1924); *People vs. Balines*, G.R No, L-9045, Sept. 28, 1956; *People vs. Lardizabal*, G.R. No. L-8944, May 11, 1956.

[19] *Ibid.*, p. 782, citing *People vs. Villaroya*, L-5781, August 30, 1957

[20] *Tr.*, November 7, 1960, pp. 84-85

[21] *Mendezona vs. Philippine Sugar Estates Dev. Co.*, 41 Phil. 475, 493; *El Hogar Filipino vs. Olviga*, 60 Phil. 17, 21.

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