

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARIANO CU UNJIENG, JOHN DOE, AND MANUEL CARLOS, DEFENDANTS. MARIANO CU UNJIENG, DEFENDANT AND APPELLANT.

G. R. No. 41200[1]. December 17, 1935

Ponente: DIAZ, J.

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DIAZ, J.:

Several motions, one after another, have been filed by the appellant to ask for a new trial on the ground that new evidence of such nature that, if admitted, would result in the modification or revocation of the sentence imposed upon the appellant, has been discovered.

For the sake of clearness and order, the motion presented on June 15, 1935, shall, hereafter, be called first motion for new trial;

The one presented on July 13, 1935, as supplemental motion for new trial, shall be called second motion;

The one presented on August 14, 1935, as second supplemental motion for new trial, shall be called third motion; and

The one presented on September 14, 1935, as third supplemental motion for new trial, shall be called fourth motion.

It should be noted at the outset that the second, third and fourth motions have been presented in open violation of Rule 39 of the Rules of this court. Said rule does not permit the filing of more than one motion for reconsideration or for new trial without express leave of the court Which must precisely be secured beforehand; much less, when, as it happens in this case, the special period of more than two and a half months, which had been granted for the presentation of a motion of that nature, has already elapsed. And this rule holds true, notwithstanding the fact that section 42 of General Orders No. 58 permits the filing of a motion for new trial at any time before the final entry of a judgment of conviction, because the granting or not granting of such motions is a purely discretionary act (U. S. vs. Raymundo, 14 Phil., 416), and the denial and even the striking out of such motions does not constitute an abuse of discretion when, as the ones here under consideration, they are without merit and, besides have been presented without due permission and outside the authorized period of time.

The first motion is based on the alleged recantation of Manuel Carlos and the alleged revelation by his concubine named Amalia Francisco of some facts which, if true, might perhaps constitute a proof, more or less admissible, that may refute, to a certain extent, the testimony of said witness at the trial of the case.

The recanting testimony of Manuel Carlos cannot change the result of the case. The appellant took part in the commission of the complex crime of which he was convicted with the same malice and to the same degree or extent as the said witness and Rafael Fernandez. Even granting for the sake of argument that it was not the

appellant who instructed Manuel Carlos to falsify the documents referred to in the case, his responsibility as coauthor of the said crime is the same because before pledging the warehouse receipts, certificates of stock and the other documents mentioned in the decision, he was aware of the nullity thereof on account of their falsity. It should be known that the defense itself admitted in its brief that, if it were proven that the appellant was aware of the true nature of said documents, his guilt would admit no discussion. It stated as follows:

"We agree with the court that if Mariano Cu Unjieng knew the quedans were to be forged, then he is guilty for that reason without any other * * *." (Page 608, AB-1).

The evidence of record justifies fully the conclusion of the court below appearing in the following portion of its decision:

"The first point to be noted in the telegram is that the quedans to be pledged were to be Pampanga Sugar Development Company quedans. This fact is of great significance when considered in connection with the fact that the only forged and spurious quedans pledged to secure the account purported to be the quedans of that company. The evidence shows that these were the only spurious quedans that had been and were being printed at the time this account was opened. The fact that the defendant knew exactly how to describe the forged and spurious quedans that were to be pledged indicates guilty knowledge of their character.

"Another point to be noted about the telegram is that Cu Unjieng had represented that only sold sugar was to be pledged. In connection with this representation, Mr. Shaw testified about an incident which is of the greatest significance in its bearing upon the question of the guilty knowledge of the defendant as to the character of, those quedans. The defendant refused to exhibit the sale contracts covering the sugar to be pledged, when requested to do so by Mr. Shaw, upon the pretext that that information was confidential in character. Mr. Shaw's testimony on the point is on page 301 of the Transcript and is as follows:

" 'Q. You stated that Mr. Cu Unjieng told you that the security would consist of quedans representing sugar that had been sold. Did you require the production on the exhibition to you of the contracts under which the sugar had been sold?—A. Yes.

" 'Q. And did Mariano Cu Unjieng present those contracts to you?—A. No, he said that he preferred not to present them because those contracts were confidential in character.' " (Pages 81-82 of the decision of the lower court.)

The court below was referring to a cablegram which Mr. Shaw sent to the central office of his bank (The National City Bank of New York), in New York, on November 10, 1930, immediately after the appellant had made arrangements with him for the opening of account No. 2 for his father Guillermo A. Cu Unjieng. Said cablegram was couched in the following terms:

"May we advance up to P500,000.00 to G. A. Cu Unjieng against sugar quedans Pampanga Sugar Development Company on basis 75% market value. We are assured only sold sugar will be pledged. Advance will be fluctuating but entirely liquidated by end of May." (Exhibit 32.)

As has been said in the decision, all the forged warehouse receipts by pledging which the appellant succeeded in obtaining several sums of money in the form of overdrafts from the National City Bank of New York and the Hongkong and Shanghai Banking Corporation, were supposed to be of the Pampanga Sugar Development Co., Inc., and according to the testimony of Manuel Carlos, some of said documents had already been forged and others were then being forged by him.

As has also been said in the decision, the appellant, notwithstanding the condition which he had stipulated with Rafael Fernandez and which, immediately afterwards, he, in turn, stipulated with Mr. Shaw (November 19, 1930, Exhibits 579, CC, CC-1 and CC-2), that the sugar stated in the warehouse receipts which he pledged to the latter,

as soon as he received them from said Fernandez who, according to him, had given them to him to secure a loan which he had granted Fernandez on that same date, was sugar already sold and ready for delivery in May, 1931, did not take any step to withdraw the warehouse receipts which represented said article or to dispose of the same in any other manner, in spite of the fact that he knew that said Fernandez had already been in default for some time. This behavior on his part and his conduct, later on, with Mr. Shaw, in refusing to show the contracts of sale with which he assured that the sugar stated in the warehouse receipts which he was going to pledge to him was already sold and that it could be withdrawn from the warehouses of the Pampanga Sugar Development Co., Inc., in May, 1931, all for the purpose of inducing him to open for his father (Guillermo A. Cu Unjieng) his account No. 2, cannot but reveal complicity on his part. Had he been acting in good faith, the most natural thing for him to do would have been to show said contracts to Mr. Shaw, and not allege the excuse that he could not show them because they dealt with some contracts which were confidential in nature, and also to withdraw said warehouse receipts at the expiration of the period promised by Fernandez to pay him the obligation, or in any event, to dispose of the same in some way in order not to suffer greater losses. In connection with this phase of the question, because it supplies another additional reason which destroys the theory of the appellant, it is worth mentioning the following portion of the decision of the court below, to wit:

"The defendant knew about each of the payments into the National City Bank as it was made (page 310, Trans.) and yet neither he nor Fernandez took any of the quedans constituting the security for the No. 2 account from the National City Bank. Cu Unjieng tried to explain this by testifying that there was an agreement between himself, Shaw, and Fernandez that none of the pledged quedans were to be released until Fernandez had paid Five Hundred Thousand Pesos (P500,000) into the account, thereupon they were to be delivered to Fernandez (pages 16,58416,585, Trans.). Both Fernandez and Shaw characterized this statement as untrue and the latter stated positively that the National City Bank never agreed to deliver any of those quedans to Fernandez. Thus, on page 22,668, he testified:

" 'Q. State whether or not the National City Bank was ever a party to any modified agreement.—A. No such agreement was ever suggested or made.

" 'And again on page 22,669, he said:

"There never was any three-party agreement between Mr. Mariano Cu Unjieng, Mr. Fernandez, and myself regarding delivery of quedans securing the No. 2 account to Fernandez.

"The court believes Mr. Shaw and finds that the defendant testified falsely in asserting that there was such an agreement and that he so testified in order to explain his indifference, as well as that of Fernandez, to quedans.

"Such an agreement would be incredible in any case, because there would be no point to it. Why should quedans held as security for Five Hundred Thousand Pesos (P500,000.00) be held until the last centavo of that amount of money should be paid? Good sugar quedans are easily turned into cash and no bank would require any such amount to be paid in before releasing such quedans." (Pages 113 and 114 of the decision of the lower court.)

The fact that the appellant merely crossed his arms without taking any action against Fernandez, notwithstanding the notice received by him from the National City Bank of New York, pressing him for payment of the account he had there, has no other explanation than that he knew fully well that there was no such sugar ready for delivery in May, 1931, nor any part of said article. In connection with this point, see also what has been said on pages 14 and 30 of the decision.

As also stated in the decision above-referred to (pp. 32 and 33), when Mr. Shaw informed the appellant that all the warehouse receipts which he had pledged to him turned out to be forgeries, all he did was to feign surprise; and strange to say, far from reproaching Fernandez he was affable and complacent to him, so much so that in the

conference of almost two hours which the two had in the very office of Mr. Shaw, after they had withdrawn from the presence of the latter, the appellant told said Fernandez not to worry, for he would fix up everything. Is a behavior of this nature compatible with the idea that the appellant was unaware of the flaw in the warehouse receipts pledged by him at the time he pledged them? Is it not the natural reaction of a person who believes himself innocent and finds himself in a situation similar to that of the appellant on that occasion, to burst into protestations of innocence, accuse of such and such a crime the one whom he considers to be the author of the fraud or lose his temper and take any other and still more energetic action in order to justify himself or to punish the guilty party who has placed him in an embarrassing situation, without waiting for another to do so? The appellant did nothing of the sort, and his passiveness in the presence of Mr. Shaw and his friendliness to Fernandez, not only then but also thereafter, denote clearly his complicity in the crime.

On the other hand, is not the testimony of Perfecto Padilla, whose veracity is again questioned by the defense, to the effect that he received from the hands of the appellant himself the forged warehouse receipts which Rafael Fernandez pledged to the Hongkong & Shanghai Banking Corporation in order to obtain a great portion of the sums mentioned on page 8 of the decision, corroborated by the testimony of A. G. Hall, J. T. Knowles, James Walker, B. C. N. Johnston, by Exhibit 531 which bears the date on which the account No. 1 of Rafael Fernandez in the said bank was opened—June 16, 1931—and by Exhibit V which is the statement of the account of Fernandez in the month of June, 1931? With these corroborations, what justification could there be to reject the testimony of said witness, and what excuses could be given for not considering as established the fact that the forged warehouse receipts pledged by Fernandez came from the appellant? Did not the money, obtained from the Hongkong & Shanghai Banking Corporation, come to the possession of the appellant and his father? It will be remembered that it was stated in the decision and it was repeated in the resolution by virtue of which the appellant's motion for reconsideration was denied, that the alleged loans made by him to Fernandez, for the payment of which the latter, according to the appellant, pledged warehouse receipts which turned out to be forgeries, are not real but simulated, and that said appellant knew it. From the foregoing, it naturally follows that the said money drawn from the said bank did not come to the possession of the appellant and his father as payment of some obligation but for the purpose of defrauding, which they had previously agreed upon.

If the appellant were not a party to the falsification of the documents hereinabove referred to, can it be explained why after the discovery of the fraud of which he also claims to be a victim, he and his father gave to Fernandez the sum of P350,000 so that the latter could adjust the trouble or anomaly discovered in the Peoples Bank and Trust Company, where in the name of Fernandez, Guillermo A. Cu Unjieng pledged forged warehouse receipts? It should be borne in mind that when the appellant and his father gave Fernandez said amount, a check for P75,000, issued by the latter in their favor, had just been dishonored for lack of funds in the bank on which he drew the check (Exhibit TT-21); and it should also be remembered that later on, the appellant gave Fernandez P30,000 without any security whatsoever (t. s. n., p. 16675). Why did he so act, if he did not know that there was some irregularity in the warehouse receipts and certificates with which they had been doing business? Why was the appellant determined to get back the forged warehouse receipts pledged by him, in his capacity as attorney-in-fact of his father, to the National City Bank of New York, after the discovery of the fraud in said bank? And why was he so uneasy and worried, later on, when Mr. Shaw of the said bank, whom he interviewed to ask for the warehouse receipts in question, informed him that he could not return to him any more because they had been turned over to the City Fiscal?

Among the victims of Rafael Fernandez was a creditor of his named Marcelino Pablo, father of Manuel E. Pablo who worked as deputy agent in the v agency of the Yek Tong Lin Fire & Marine Insurance Co. which had been placed in the hands of said Rafael Fernandez by Mariano Cu Unjieng, Taking advantage of his moral control over Manuel E. Pablo who, aside from being his employee, was his intimate friend, Rafael Fernandez induced said

Manuel E. Pablo to lend him, as in fact the latter did lend to him, without the knowledge of his father (Marcelino Pablo), the certificate of stock of the Philippine Trust Company which, together with other securities, had previously been delivered by him to Marcelino Pablo to secure the payment of a loan of P95,000 made to him (Exhibit ZZ-64; t. s. n., p. 3803). This took place on May 28, 1931, one day after the discovery of the frauds committed against the Peoples Bank and Trust Company (t. s. n., p. 3795). About the 10th of July of the said year, and when it was already publicly known that frauds had been perpetrated against the National City Bank of New York and the Hongkong and Shanghai Banking Corporation, at the suggestion of the appellant and of one of his attorneys and with the consent of Rafael Fernandez, Manuel E. Pablo went to the office of Rafael Fernandez to get from there all the securities which could serve as guarantee for the payment of his father's credit in the above-mentioned sum of P95,000. The appellant, who later saw said documents, convinced the two Pablos (father and son) that they should not keep all but only those sufficient to secure the payment of the father's credit. In view of the appellant's assurance to him and to his son Manuel, that said shares of stock were good, that they were worth at least P180,000 and that he was willing to secure an option to purchase them, Marcelino Pablo agreed to keep only 1,100 "Micpi" shares. It happened, however, that when Marcelino Pablo sought to register the said 1,100 shares of stock in his name, he was told that it could not be done except only as to 70 of them because to do so would be in excess of what was permitted. When Manuel E. Pablo informed the appellant of this incident, the latter merely shrugged his shoulders forgetting, the assurance given by him that all the aforementioned shares of stock were good and also forgetting his promise to secure an option to purchase them. Thereupon, Manuel E. Pablo who considered himself responsible to a certain extent for the harm done to his father, placed the case in the hands of an attorney who, without loss of time, brought it to the City Fiscal for the prosecution of Rafael Fernandez for estafa. As soon as Mariano Cu Unjieng was informed of this, he sought Manuel E. Pablo to ask him why he took such step, adding that it would cause much trouble, and he then reminded him of his promise to answer for said securities, that is, for the said 1,100 "Micpi" shares. He likewise told Manuel E. Pablo that he would give him 450 of the 1,300 shares which he had in the same business. When Manuel E. Pablo answered him that at any rate, he, as a gentleman was under obligation to fulfill his promise even if he and his father should fail to recover from Rafael Fernandez by means of a criminal action, the appellant merely said: "Well, I will talk the matter over with Mr. Fernandez" (t. s. n., pp. 3735 et seq.). Now the question is: Why this attitude of the appellant if he had no understanding with Rafael Fernandez concerning all of these frauds and forgeries? If he and his father, as they pretend, were so much the victims of Fernandez as the above mentioned banks, can there be any honest explanation of what the appellant did with respect to this Pablo incident? Why the attempt, on his part, to save Rafael Fernandez from criminal prosecution since his reproach of Manuel E. Pablo amounts to that, going to the extent of offering to repair the damage caused to Marcelino Pablo with his own property, that is, with the same shares of stock he had in the "Micpi"? Had not Fernandez, some months before, issued to him a check for P75,000 without funds? Had he not already been discovered negotiating forged documents with the banks? The answers to these questions can, in no way, be favorable to Mariano Cu Unjieng.

These reasons and those stated on pages 30, 31 and 35 of the decision show that the appellant is as guilty of the crime of which he was convicted as Rafael Fernandez.

Other reasons may be mentioned to show that, with or without the testimony given by Manuel Carlos at the trial, the guilt of the appellant is a thing which cannot be doubted in any way. Such reasons would not, however, be new but just a repetition inasmuch as they are already stated in order in the decision. To understand the real value and force of said reasons, it is necessary to correlate them with one another and to consider them, not singly, but as a whole.

And it was, certainly, stated in the decision that even if the testimony of Manuel Carlos were disregarded, there would still be, as in fact there is, sufficient evidence of record, that points with the finger at, the appellant as one

of the persons responsible for the fraud committed against the Hongkong and Shanghai Banking Corporation (page 21 of the decision). It is not amiss to recall here the considerations of the trial Court on the same particular on page 142 of its decision. For the sake of brevity, said considerations are not inserted here because, at any rate, they are already quoted on page 8 of the resolution denying the motion for reconsideration.

Manuel Carlos is an expert forger, not only because he so admitted but also because he demonstrated it at the trial practically and publicly (t. s. n., pages 5479-5484). This fact requires no corroboration, and if it were dovetailed with the finding of the aforesaid warehouse receipts and other forged documents in the possession of the appellant or with the passage thereof through his hands and through those of Rafael Fernandez; and if it were dovetailed also with the fact that, thanks to said documents, the appellant and Fernandez succeeded in obtaining, for themselves and for Guillermo A. Cu Unjieng, money from the banks and the entities mentioned in the decision, especially from the Hongkong and Shanghai Banking Corporation; and likewise with the fact that, afterwards, the appellant exerted much effort in helping Fernandez save his property and also to save him from prosecution (the Pablo case), and in withdrawing the forged warehouse receipts pledged by him to the National City Bank of New York, there would be no way of escaping the conclusion that the appellant is in no wise exempt from responsibility as co-conspirator of Fernandez and of Carlos.

Besides, in the case of *State vs. Williams* (152 Mo., 115; 53 S. W., 424; 75 A. S. R., 441), it was said:

"Error is assigned on the instruction given by the court to the effect that one who is recently in possession of, and attempts to sell or obtain money on, a forged note, is presumed to have forged the same, and, unless such possession or forgery is satisfactorily explained, the presumption becomes conclusive. In *State vs. Allen*, 116 Mo. loc. cit. 556; 22 S. W., 793, it was ruled that the presumption arising from the possession of the fruits of crime has, with reason and propriety, been indulged in prosecutions for forgery. The same considerations have actuated the courts as obtained in larceny and burglary, in which the recent possession of stolen property is prima facie evidence that the possessor is the thief, and, unless explained, becomes a conclusive presumption of his guilt. *State vs. Kelly*, 73 Mo., 608; *State vs. Burd*, 115 Mo., 405; 22 S. W., 377; *State vs. Haws*, 98 Mo., 188; 11 S. W., 574; and 12 S. W., 126; *State vs. Yerger*, 86 Mo., 33. Tested by these repeated rulings, there was no error in the instruction." This was adopted as a good rule in 12 R. C. L., 164, where it is stated under the heading "forgery":

"A person who is recently in possession of, and attempts to sell or obtain money on, a forged note is presumed to have forged it, and unless such possession or forgery is satisfactorily explained the presumption becomes conclusive."

It seems that what has been said in the above-cited cases opportunely applies to the case now under consideration; for it will be noted from the reading of the case of *State vs. Williams* that the law of Missouri, like the Old Penal Code of the Philippines under whose provisions the appellant was convicted and sentenced to imprisonment and to pay the proportionate part of the costs, defines and penalizes falsification of mercantile documents and the utterance of forged mercantile documents, knowing that they are forged, as two crimes distinct from and independent of one another (articles 301 and 302 of the Old Penal Code of the Philippines). *Williams*, the accused in the above-mentioned Missouri case, was indicted first for having uttered a forged promissory note, under section 3634 of the Revised Statutes of 1889. After having been acquitted of said crime, he was prosecuted, for the second time, under section 3633 of the same Revised Statutes, charging him in the second prosecution with the crime of forgery of a promissory note which was exactly the same document which he had uttered, according to the indictment preferred against him in his first prosecution.

The Court of Missouri resolving the defense of *autrofois acquit* invoked by *Williams*, based on his acquittal of the crime of knowingly uttering a forged document or promissory note, said:

"* * * Under our statutes, they are distinct and separate crimes. The Supreme Court of Arkansas, in *Ball vs. State*, 48 Ark., 94; 2 S. W., 462, said:

" 'Forgery is one offense, and uttering a forged instrument as genuine, knowing it to be false and forged, is another and distinct offense, A party might be convicted of either without being guilty of the other. The doctrine maintained in many of the States, that counts for each of said offenses may be joined in one indictment, and the State not compelled to elect, does not affect the question. (*People vs. McMillan*, 52 Mich., 627; 18 N. W., 390; *State vs. Wood*, 13 Minn., 121 [Gil., 112]; *Buren vs. State*, 16 Lea [Tenn.], 61; *State vs. McCormack*, 56 Iowa, 585; 9 N. W; 916; *State vs. Snow*, 30 La. Ann., 401; 1 Bish. New Cr. Law, sec. 1066.) Applying another test: The facts alleged in this (the second) indictment, if proven to be true, would not have warranted a conviction on the first, or the indictment for uttering a forged note. (*Com. vs. Trimmer*, 84 Pa. St., 69.) On the other hand, on the trial of the first indictment it was not essential to prove that defendant forged the note. Proof of forgery by some other person, and his uttering the same knowing it was a forgery, was all that was necessary. Being distinct offenses, neither is merely a degree of the other. And, continuing, it also said what has already been quoted hereinbefore, as follows:

"One who is recently in possession of, and attempts to sell or obtain money on, a forged note, is presumed to have forged the same, and, unless such possession or forgery is satisfactorily explained, the presumption becomes conclusive."

There is no reason why the same criterion and the same rule should not be adopted in this jurisdiction, because the circumstances which concurred in one and the other case are identical. Heretofore, it has invariably been held that when stolen property is found in the possession of one, not the owner, without satisfactory explanation of his possession, he will be presumed to be the thief; that the possession of stolen property is prima facie evidence that the possessor is the thief and throws on him the burden of accounting for his possession (*U. S. vs. Mohamad Ungal*, 37 Phil., 835, and the cases therein cited; *U. S. vs. Caralipio and Fernando*, 18 Phil., 421). With more reason, said rule should be adopted inasmuch as section 334, subsection 10, of Act No. 190 establishes the presumption that:

"Things which a person possesses are owned by him."

And it has already been said that the excuse given by the appellant to the effect that he was not aware of the nature and flaw of the forged documents which Rafael Fernandez had pledged to him is unfounded. It has likewise been said that for the reasons already stated, he knew them to be false.

Manuel Carlos says in his recantation that if he testified against the appellant, it was due to the insistent request of Rafael Fernandez; that everything he said against the appellant is not true; that it is Rafael Fernandez who had ordered him to forge sugar warehouse receipts and contracts of loan on future crops of said article; and that the purpose of Fernandez, in ordering him to commit said falsifications was to negotiate the forged documents with the Cu Unjiengs, the banks and other persons.

If the purpose of the affidavit of Manuel Carlos which contains his recantation is to make us believe that Rafael Fernandez taught him to testify as he did on July 11, 1932, and the following days against the appellant, it is advisable to know that what he testified then is not something new because on October 14, 1931, before Assistant City Fiscal Sotero Rodas, and on May 7, 1932, in an affidavit presented in connection with criminal case No. 42260 entitled "*The People of the Philippine Islands vs. Rafael Fernandez*", (Exhibit 646), his testimony was substantially the same. Therefore, it may be affirmed that when he testified in this case, he did nothing but to repeat or reiterate what, on those two previous occasions, he had said without any intervention of or pressure from the interested parties in this case, much less from the offended corporation; and it may also be affirmed that he was not taught by Fernandez to testify against the appellant in this case. Furthermore, as Manuel Carlos stated the

same thing three times, on different occasions, not consecutively, indeed, but with many months' intervals, and there being, as there is, corroboration that some of the forged documents came from the appellant, according to Perfecto Padilla, Mr. Shaw and the other witnesses already mentioned, and that others passed through his hands and he negotiated them with the banks in order to obtain money, what credit can be given to his recanting testimony, particularly it being known, as in fact it is known, that it comes from a confessed perjurer, and, besides, it is not corroborated by anybody or by any evidence deserving of serious consideration? What guaranty is there that what he now says is the truth and not what he declared at the trial where he was subjected to a rigid cross-examination for days and weeks? It will be stated hereinafter that the alleged corroboration of Amalia Francisco, concubine of said Manuel Carlos, is improbable and puerile, and, consequently, unworthy of credit.

The very recantation of Manuel Carlos contains, on the other hand, a detail which reveals lack of spontaneity and sincerity and gives rise to the belief that it is nothing but the result of undue influence exerted upon him so that he might ratify it by his signature. It is the detail inferable from its terms which are as follows:

"That after learning that Mr. Mariano Cu Unjieng was convicted by the Supreme Court for the falsification of sugar quedans which Mr. Rafael Fernandez negotiated with the former, my conscience has become restless for I have then realized that I committed an unpardonable wrong to Mr. Cu Unjieng. I cannot even sleep nor eat for I realize now that I have become a tool of the bank and of a wicked man, Mr. Rafael Fernandez. Believing that it is not yet late to amend the wrong I have committed, I have decided to reveal the whole truth in this case and for this reason I must state:" (Page 66 of the motion for new trial.)

Can it be explained why the mind of said witness could remain tranquil, without being tortured by remorse, and without having lost his appetite or sleep since January 8, 1934, when the court below sentenced the appellant to a penalty which is more severe than that imposed by, this court, until March 26, 1935, when the sentence of this court imposing upon him a lighter penalty was promulgated? Is it because the conscience of said witness was so dulled that it did not experience the least reaction up to May 18, 1935, when he subscribed his recantation? And what caused his coming to himself or his awakening from such stupor which lasted exactly one year, four months and ten days? This is certainly the period of time which elapsed between January 8, 1934, the date of the promulgation of the decision of the court below, and May 18, 1935, the date of the recantation of said witness.

If the entire testimony of Manuel Carlos against the appellant in this case were false, the most natural thing to have happened, if no powerful influence, which was neither remorse nor repentance has intervened, would have been for him to make the recantation immediately or shortly after the promulgation of the sentence of the lower court or at most, that of this court, without letting months and weeks elapse, by going, for said purpose, preferably, to the fiscal whom he deceived in the first place, so that the latter might help him undo the wrong done to an innocent person, and not to a notary public of the appellant's choice.

As stated very correctly in the cases of *People vs. Marquis*, 176 N. E., 314, 315, citing that of *People vs. Shilitano*, 218 N. Y., 161; and *People vs. Tallmadge*, 114 Cal., 42746 Pac, 282:

"Recantation by a witness of his testimony on a trial does not necessarily entitle a defendant to a new trial. Recanting testimony is regarded as very unreliable, and a court will usually deny a new trial based on that ground where it is not satisfied that such testimony is true. Especially is this true where the recantation relied on involves a confession of perjury. The recanting testimony of witnesses will not ordinarily be regarded as sufficient ground for a new trial except in extraordinary and unusual cases. (33 A. L. R., page 550, note.) The affidavit of a recanting witness is not entitled to so much weight as to justify the conclusion that the evidence given by him was corrupt and willfully false. The conclusion of the jury would rather warrant the presumption that his testimony was truthful and his affidavit false. Those experienced in the administration of criminal law well know the untrustworthy character of recanting testimony. (*People vs. Shilitano*, 218 N. Y., 161; 112 N. E., 733; L. R. A. 1916F, 1044.)"

"It cannot be said that, as a matter of law, a new trial should be granted whenever an important witness against the defendant shall make an affidavit that he committed perjury in his testimony; if that were so, justice would be defeated in many grave cases."

This court, knowing this very thing, and understanding likewise that the testimony given at the trial with the solemnities prescribed by law and in the presence of a judge who studies the incidents and details of such testimony and scrutinizes the demeanor of the witness, while he is testifying, carries with it the presumption that it is spontaneous and that it has been given with absolute freedom without pressure from any one, unless the contrary appears, has overruled motions for new trial based on the recantation of witnesses who alleged having testified against the accused at the trial because of threats, pressure or influence of another (U. S. vs. Alvarez, 3 Phil., 24; U. S. vs. Raymundo, 14 Phil., 416; U. S. vs. Miyamoto, 36 Phil., 762; U. S. vs. Valdez, 30 Phil, 293).

In the case of the United States vs. Valdez, supra, it was said:

"In this court, a motion for a new trial, which of course must be denied, has been submitted, supported by an affidavit made by Arcilla in his prison cell, in which he retracts most of his testimony given at the Valdez trial, and declares that he was induced to testify falsely by the constabulary officers and men while under arrest in Cabanatuan. This sworn retraction of his testimony does not in the slightest degree shake our belief in the guilt of Valdez for, as we have said before, we do not rest our conviction of his guilt on the mere probability that any one of the self-confessed accomplices would tell the truth when called to the witness stand, but upon the inherent impossibility that they and the other witnesses for the prosecution could have given the account of the commission of the crime, as they did, without betraying its falsity under the rigid cross-examination to which they were compelled to submit, if it had been false."

Manuel Carlos could not have been more thoroughly examined and cross-examined by the prosecuting attorney and by the attorneys for the appellant; since he was at their disposal for ten long days. Had he not told the truth then, he would necessarily have impeached himself, that is to say, that he was not telling the truth relative to the appellant's participation in the falsification of the documents in question; but the truth is that his testimony suffered no jolts that would have shattered it to pieces.

Furthermore, it should be stated with the New York court which decided the above-cited case of the People vs. Shilitano, that it is not a matter of law that whenever a convicted accused files a motion for new trial based on the recantation of one or more witnesses for the prosecution, such motion should be granted. Certainly not; for, if such were the rule, the power to grant a new trial—using the same reasons given by said court—would not rest in the courts but in the witnesses who have testified against the accused who seeks said remedy. The following are the words of the Court of New York:

"At the outset of our task in considering this alleged newly discovered evidence it is necessary to determine whether recantation by witnesses called on behalf of the people necessarily entitled the defendant to a new trial. The question must be answered in the negative, otherwise the power to grant a convicted defendant a new trial rests not with the court, but with the witnesses who testified against him upon the trial."

The testimony of Amalia Francisco, concubine of Manuel Carlos, does not enhance the value to the recantation of the latter; on the contrary, it detracts from the merits, if any, of such recantation. To give credit to said woman is to declare Rafael Fernandez a pre-eminent fool, because he is a pre-eminent fool who, having no intimacy with a person, acquaints him of his plan to forge warehouse receipts and other documents for the purpose of negotiating them with the Cu Unjieng family and with other sugar merchants of Manila, taking advantage of his alleged influence with the banks; and he is much more so, if in the presence of said person, he requires his accomplice to swear not to reveal to any employee of the person or persons whom he desires to swindle, that the warehouse receipts which he proposes to issue and utter are forged; and later, between himself and his accomplice, burn the

forged warehouse receipts and other documents falsified by them also in the presence of such person, after the fraud is discovered. In short, Amalia Francisco testified that her lover, Manuel Carlos, told her at first, that there was a plan between him and the appellant to pretend that they were sugar merchants but that there was no relation whatsoever between them, that about the end of the year 1929, Rafael Fernandez went to the house where she and Manuel Carlos lived for the purpose of inducing Manuel Carlos to forge sugar warehouse receipts and other documents telling him, without the least caution, that he would negotiate them with the Cu Unjieng family and with other sugar merchants in Manila, availing himself of his alleged tremendous influence with the banks; that Fernandez said that he would reward Manuel Carlos liberally; that he made Manuel Carlos swear not to tell to any of the employees of Cu Unjieng nor to any of his relatives that the warehouse receipts which he was going to issue and utter were forged; that in case of discovery, he would also say that the forgery was made upon instructions of the appellant or the Cu Unjieng family; that when the forgeries were discovered, Fernandez went hurriedly to the house where she and Manuel Carlos lived to order them to burn, as they in fact burned in the presence of said Fernandez according to said witness, all the warehouse receipts and other documents which they kept in their house.

It is neither usual nor natural and it is against common sense to conspire with another to commit a crime, in the presence of a third person whose cooperation is neither necessary, nor sought nor expected. Criminals plot their crime within the four walls and if possible, in the dark, because witnesses at least hinder, if they do not altogether spoil the most matured or organized plan, especially if they are women, are, besides, mere concubines, and are not paid, as Amalia Francisco, since she was not even promised anything to seal her lips and thereby prevent her from squealing, if things come to the worst. If the theory and evidence for the defense are to be believed, Rafael Fernandez is very intelligent and extraordinarily alert, so much so that to him is attributed no less than the commission of the crime in question. Fernandez is undoubtedly intelligent, for, besides being a public accountant, he studied business in the University of the Philippines and in the University of Chicago and took a postgraduate course in said branch of science in the University of Harvard; and upon his return to this country, he taught banking in two recognized colleges. All of these show that what Amalia Francisco attempted to insinuate in her affidavit upon which, together with that of Manuel Carlos, the defense based its first motion for new trial is not, and cannot be true.

On the other hand, Amalia Francisco's testimony does not corroborate the recantation of Manuel Carlos in many respects; and there is no satisfactory explanation why said woman had not made her revelation long before. Was she induced by somebody to make it? Was she asked to do so by her lover or by the appellant? What considerations or reasons were brought to bear upon her mind to induce her to make the revelation? These questions are answered by: (1) the letter of said Amalia Francisco to the Solicitor-General, dated July 10, 1935; and (2) the statements of said woman made at the Bureau of Justice on the 13th of said month and year.

The letter reads:

"Manila, P. I.

"July 10th, 1935.

"To HON. SEEAFIN HILADO

"Solicitor-General,

"Bureau of Justice

"Manila, P. I.

"Sir:

"On the 10th of May 1935, I signed an affidavit which was submitted to my signature already prepared by an Attorney and duly ratified before Mr. Francisco G. Perez, Notary Public of this City of Manila, and which later

I found out thru 'La Vanguardia' referred to the case pending final decision against Mr. Mariano Cu Unjieng. In the information published by 'La Vanguardia' there appeared my name and that I would be called upon as a witness if a retrial of the case would be granted by the Supreme Court. As I am worried over this matter and not knowing anything regarding the contents of said affidavit, I wish to state herewith, that I signed same without full knowledge of what it contained, and I would beg your honor to give me an opportunity (personally) to explain the circumstances that led me to sign said affidavit. And in testimony of what I have above stated, I herewith sign the present statement.

"Respectfully yours,

"AMALIA FRANCISCO

"20 Teresa, 28 Int.

"Santa Mesa, Manila

"(Part III, page 6,

"Gov. Printed Oppositions)."

The above-mentioned statements may be inferred from the following interrogatory:

"STATEMENT OF MRS. AMALIA FRANCISCO BEFORE HON. SERAFIN P. HILADO,
SOLICITOR-GENERAL, BUREAU OF JUSTICE

"July 13, 1935.

"MRS. FRANCISCO: Good morning, Mr. Hilado?

"HILADO: Good morning. What can I do for you, madam?

"MRS. FRANCISCO: I want to state here that when they made me sign the affidavit, the Honorable Del Rosario said that they were going to make money; that I had nothing to worry about; that I will not be harmed; that I will be living nicely, happily and no danger at all. Our situation, if you want to know, is that we are three, mother and two children. We live by begging from some friends. I have no means of living, although I tried to keep myself busy. So I felt happy when they told me about money. But when I read from the La Vanguardia that I was to be a witness, I was astonished or surprised, because I was not made to believe in that way.

"HILADO: What did they tell you before you signed this affidavit?

"MRS. FRANCISCO: They told me that I was going to live very happy, but really they did not tell me that I will be a witness in the Cu Unjieng case. I was made to believe that they will make settlement between Carlos and myself.

"HILADO: Who told you that?

"MRS. FRANCISCO: Del Rosario, and also Miranda told me: 'You ought to have money, we will help you in making money'. But they did not tell me anything concerning the contents of the affidavit. I trusted what they have written in the paper, because you know I have eye defect. We did not talk very long. They just talked about money and money and they convinced me that they are going to give money.

"HILADO: They gave you the money?

"MRS. FRANCISCO: No, sir.

"HILADO: Did you receive?

"MRS. FRANCISCO: I did not receive.

"HILADO: Who induced you?

"MRS. FRANCISCO: Vicente del Rosario.

"HILADO: A lawyer?

"MRS. FRANCISCO: Yes, sir.

"HILADO: The one who was in the Executive Bureau before?

"MRS. FRANCISCO: Yes, sir. I saw there Vicente del Rosario, Mr. Orense and Mr. Francisco Perez.

"HILADO: Where did you sign this document, in what building?

"MRS. FRANCISCO: In the Cu Unjieng building, Escolta.

"HILADO: Where did you meet?

"MRS. FRANCISCO: In the Cu Unjieng building in Mr. Del Rosario's office. They made me sign on May 10, 1935, because was sent by Miranda.

"HILADO: Is this your signature?

"MRS. FRANCISCO: I cannot see right now.

"HILADO: Can you not read?

"MRS. FRANCISCO: I can read and write if my eyes would be treated, I tell you frankly.

"HILADO: Can you see a person?

"MRS. FRANCISCO: Yes, if he is near me; but if he is quite far, I can not recognize him any more.

"HILADO: Is Carlos still living with you?

"MRS. FRANCISCO: No.

"HILADO: So it was Mr. Miranda who went to your house?

"MRS. FRANCISCO: He was living in my house.

"HILADO: So he was living in your house?

"MRS. FRANCISCO: Yes, sir, for seven months.

"HILADO: Is he still living in your house?

"MRS. FRANCISCO: No more, he left my house in June.

"HILADO: And so he is the one who went and asked you to go to the office of Cu Unjieng?

"MRS. FRANCISCO: To the Cu Unjieng building.

"HILADO: And then, in the Cu Unjieng building, you met Eusebio Orense?

"MRS. FRANCISCO: I saw him there.

"HILADO: You met Vicente del Rosario?

"MRS. FRANCISCO: Yes, sir.

"HILADO: Who is the one who made you sign this document?

"MRS. FRANCISCO: Mr. Del Rosario and Mr. Perez.

"HILADO: Do you know this Eusebio Navarro?

"MRS. FRANCISCO: No, sir.

"HILADO: And what about this person you are mentioning, Francisco Perez?

"MRS. FRANCISCO: I really do not recognize his face but he is tall, that is what I remember, his height.

"HILADO: When you arrived in the Cu Unjieng building, who was the one who spoke to you?

"MRS. FRANCISCO: Mr. Del Rosario.

"HILADO: What did they tell you while in conversation?

"MRS. FRANCISCO: They talked to me about money. They told me that they knew that Carlos was a bad man in treating me in that way and that I was going to have money without any harm. Well, I do not know what intention they had. They made me believe that they would get it from Carlos with whom I had lived for nine years.

"HILADO: How did you happen to sign this paper?

"MRS. FRANCISCO: I signed because they ordered me to sign.

"HILADO: Did they explain to you what the paper contains?

"MRS. FRANCISCO: They read something but I could not understand because I was so nervous and excited.

"HILADO: They told you they were going to give you money?

"MRS. FRANCISCO: Yes, sir, and they said not to worry about money, because I was going to have the money.

"HILADO: So you do not know the contents of this document?

"MRS. FRANCISCO: No.

"HILADO: And you signed it only because they promised to give you money?

"MRS. FRANCISCO: Certainly.

"HILADO: Who made the promise?

"MRS. FRANCISCO: Del Rosario and Miranda.

"HILADO: And Francisco Perez, did he promise you also?

"MRS. FRANCISCO: He was there but he did not take part in our conversation.

"HILADO: When you arrived there, this document was already prepared?

"MRS. FRANCISCO: Yes, sir, I did not stay long.

"HILADO: How did you come to write to me a letter?

"MRS. FRANCISCO: I just borrowed eye-glasses from our neighbor.

"HILADO: With eye-glasses, can you read?

"MRS. FRANCISCO: Yes, sir.

"HILADO: When you went there to their place, had you not eye-glasses?

"MRS. FRANCISCO: No, sir.

"HILADO: Do you want to make your statement under oath and in writing?

"MRS. FRANCISCO: Yes, sir.

"HILADO: Will you please go with Mr. Cuyugan in his room and make your statement there?

"MRS. FRANCISCO: Yes, sir.

"HILADO: After you have finished, will you be kind enough to come back here?

"MRS. FRANCISCO: Yes, sir. (Part. III, pages 8-13, Govt. Printed Oppositions)."

"IN THE ROOM OF ATTORNEY CUYUGAN.

"CUYUGAN: Do you want to make your statement under oath?

"MRS. FRANCISCO: Yes, sir, but I want to testify in Spanish.

"CUYUGAN: Please raise your right hand, madam, and do you swear to tell the truth, the whole truth and nothing but the truth?

"MRS. FRANCISCO: Yes, sir.

"QUESTIONS BY FISCAL CUYUGAN.

"Q. What is your name, madam?—A. Amalia Francisco.

"Q. Your age?—A. I will be 46 in September.

"Q. Married?—A. Widow.

"Q. Where do you live?—A. At present?

"Q. Yes, madam.—A. 20 Teresa, 28 Interior, Santa Mesa, Manila.

"Q. Are you the same Amalia Francisco residing at Teresa Street, 28 Interior, Santa Mesa, Manila, who has written this letter dated July 10, 1935, to the Honorable Serafin Hilado, Solicitor-General, Bureau of Justice? (The Fiscal shows her the letter.)—A. Yes, sir.

"Q. You sent this letter by mail, special delivery, did you not?—A. Yes, sir.

"Q. And this is the envelope, is it not? (The envelope is shown to her.)—A. Yes, sir.

"Q. In this letter you said that you wish to have the opportunity to explain personally the circumstances which led to your signing an affidavit on May 10, 1935, before the Notary Public, Mr. Francisco G. Perez. Now madam, do you want to make statements regarding the circumstances mentioned by you?—A. Yes, sir.

"Q. I show you this affidavit marked Exhibit 2—new trial of the accused Mariano Cu Unjieng in Criminal Case No. 41200 of the Supreme Court, which bears the signature of Amalia Francisco and was subscribed and sworn to before the Notary Public, Francisco G. Perez, on May 10, 1935. Can you tell me whether this is the same affidavit mentioned by you in your letter of July 10, 1935?—A. I am sorry to tell that I do not see anything.

"Q. Why can you not see, madam?—A. The circumstance that I do not have a good eyesight

"Q. Do you mean to say that you can not see well without eyeglasses?—A. Yes, Mr. Cuyugan.

"Q. Will you find out whether you can see this affidavit with my eyeglasses? (The witness puts on Fiscal Cuyugan's eyeglasses.—A. No, they are not of my grade.

"Q. Can you see with these eyeglasses (eyeglasses of the stenographer Mr. Gil Peralta) which I give you now?—A. Yes, sir, I can see with these eyeglasses.

"Q. Now with these eyeglasses, can you tell me if this Exhibit 2—new trial, is the affidavit which you signed on May 10, 1935, as stated by you in your letter?—A. Yes, sir.

"Q. Is the signature which appears here and reads Amalia Francisco your's or not?—A. Yes, sir, it is my signature.

"Q. With the eyeglasses of stenographer Peralta, please read this affidavit Exhibit 2—new trial and state afterwards whether the contents are true or not?—A. The first two paragraphs are true. Well, at any rate there is no need of reading it all as I do not know anything about the case.

"Q. I will read this affidavit Exhibit 2—new trial to you, part by part. Please state after each part or paragraph whether or not what this affidavit says is true.—A. Yes, sir.

"Q. The first paragraph of this affidavit says: 'I, Amalia Francisco, of legal age, widow, residing at No. 20 Teresa Street (28 Interior), Santa Mesa, Philippine Islands, hereby declare under oath:—That from the year 1924 to January 21, 1932, Manuel Carlos of Bulacan, Bulacan, and I were living together as husband and wife in my house at No. 20 Teresa Street (28 Interior), Santa Mesa, Manila', is this true or not?—A. That is true.

"Q. The second paragraph says: 'That about the latter part of the year 1929 Mr. Carlos confessed to me that Mr. Rafael Fernandez decided to use his (Carlos') services in the sugar business', is that true or not?—A. I absolutely know nothing about that paragraph.

"Q. Is it true or not that Manuel Carlos has told you something about sugar business with Rafael Fernandez?—A. We have not talked anything about that.

"Q. Paragraph 2 of this affidavit also reads as follows: '(a) That Mr. Carlos was to appear as an independent sugar merchant with an office in Manila and for that purpose Mr. Fernandez was to provide him the necessary license; that Mr. Carlos was to go to the office of the Pasudeco in San Fernando, Pampanga, and there would offer to buy the sugar of the company; and that offers of purchase would be made by Mr. Carlos in the presence of Mr. Fernandez, but the two would make it appear that they are not partners in the business', is that true or not?—A. I absolutely know nothing of this paragraph.

"Q. Paragraph 2 (b) of this affidavit says: '(b) That in fixing the price Mr. Carlos was to watch the movement of the smoke of the cigar of Mr. Fernandez, that is to say, the price to be offered by Mr. Carlos to be in accordance with the signs of smoke of the cigar of Mr. Fernandez—if Mr. Fernandez blew the smoke upward Mr. Carlos could offer a higher price; if Mr. Fernandez blew the smoke straight-forward, Mr. Carlos was to offer no higher prices; but if he blew the smoke downward Mr. Carlos should ask for the lowering of the price and in all cases it was to be lowered or increased in accordance with the number of blows, each big blow representing a peso and a small blow half a peso, what do you say about this paragraph, madam?—A. Neither am I informed of it.

"Q. Paragraph 2 (c) of the same affidavit says: '(c) That one night in the latter part of the year 1929, Mr. Fernandez came to our house and talked to Mr. Carlos, and this was what I heard: Mr. Fernandez said that he had a plan which could be executed by Mr. Carlos. He said that if Mr. Carlos could imitate the signatures of Wenceslao Trinidad and other officials of the Pasudeco on certain documents, it would be good for Mr. Carlos and Mr. Fernandez. Mr. Fernandez said that his idea was to make false sugar quedans and other documents which he would negotiate with the banks in Manila, with the Cu Unjieng family and with, the other sugar merchants in the City. He said that Mr. Carlos could easily make those documents and he could easily negotiate them because he has a tremendous influence with the banks and with the Cu Unjieng family. From the proceeds of the sale of these quedans Mr. Carlos was to receive a liberal compensation. At first, Mr. Carlos refused to accept the proposition of Mr. Fernandez for he was afraid to be involved in a serious crime, but after

hearing Mr. Fernandez' sweet promises and convincing explanations, Mr. Carlos said, 'Yes, if that is the case, I will do it for your sake, but let me study it carefully', what do you say of this, madam?—A. I am likewise absolutely unable to explain such thing to you because I am not informed of the same.

"Q. Is it true that in one of the last months of the year 1929, Mr. Rafael Fernandez came personally to your house?—A. I have not seen him.

"Q. Has Mr. Fernandez ever come to your house?—A. Not even once.

"Q. Do you know Mr. Fernandez personally?—A. It seems that I have seen him once, but I do not remember his face;

"Q. Where have you seen him?—A. In the street when Carlos and I were still living together.

"Q. Do you mean to say when you were still living together with Manuel Carlos?—A. Yes, Mr. Cuyugan.

"Q. But has Fernandez ever been in your house?—A. I do not remember that man has ever been in our house.

"Q. During the time you were living together with Manuel Carlos has Carlos ever confessed to you that he had an agreement with Rafael Fernandez to forge some quedans or documents of the Pasudeco?—A. We have not talked even once about that matter.

"Q. Paragraph 2 (d) of this affidavit says: '(d) That Mr. Carlos was made to swear that he would not tell any of the employees of Cu Unjieng or his relatives that the quedans Mr. Fernandez was going to float were forged and not genuine; and that if the forgeries were discovered, Mr. Fernandez and Mr. Carlos would state before the authorities and the banks that the quedans were forged by instruction of Mr. Mariano Cu Unjieng or by the Cu Unjieng family', what do you say about this paragraph?—A. Nothing, absolutely nothing, I am not informed of this.

"Q. Are the contents of this paragraph true or not?—A. I do not see anything certain about it, nor is it certain because I am not informed of this paragraph.

"Q. Paragraph 2 (e) of this affidavit says: '(e) That after a week Mr, Carlos brought to our house packages of forms of quedans and from those forms Mr. Carlos filled out or made sugar quedans, which later, according to the confession of Mr. Carlos to me, were negotiated with the Banks and Mr. Cu Unjieng', what do you say of this paragraph, madam?—A. I have not seen these packages mentioned by you in my house.

"Q. Have you ever seen some forms of sugar quedans?—A. I have never seen one, neither do I know what kind of papers those were.

"Q. During the time you were living together with Manuel Carlos did you ever see him write on some forms in your house?—A. Nothing, sir.

"Q. Is the statement of this paragraph, that Manuel Carlos confessed to you on that occasion that what he was writing or filling were sugar quedans to be negotiated with the banks and with Mr. Cu Unjieng, true?—A. We have not talked about that case absolutely.

"Q. Paragraph 2 (f) of this affidavit says: '(f) That when the forgeries were discovered Mr. Fernandez hurriedly came to our house one night and ordered me and Mr. Carlos to burn all the quedans and other papers kept in our house, and in pursuance of this order Mr. Carlos burned many papers in my presence while Mr. Fernandez was watching' what do you say of this paragraph, madam?—A. I think all those things are fables.

"Q. Is it true, madam, that one night Mr. Fernandez went to your house and ordered Carlos and you to burn Certain papers?—A. I have not seen any Fernandez come to my house and give such orders.

"Q. But is it true that Manuel Carlos has burned many papers in your and Rafael Fernandez' presence, or

not?—A. I do not know anything about that and I think they are fables.

"Q. But personally, have you seen Carlos burn many papers in your house?—A. Nothing sir, because he would be afraid to build a fire in our house as our house is made of nipa, and he does not have sufficient place to do so many things.

"Q. Paragraph 2 (g) of this affidavit says: '(g) That when the forgeries were being investigated by the authorities in Manila, Mr. Fernandez sent us (Mr. Carlos and I and my children) to Bulacan, Bulacan, and there we were strictly prohibited from receiving visitors. Mr. Fernandez used to visit us three or five times a week', what do you say of this paragraph, madam?—A. As to this paragraph, it is true that we were in Bulacan, but I don't know the reason of our vacation there.

"Q. Who took you to Bulacan?—A. Nobody, took us there, we, together with my family, have gone there only because I was sick.

"Q. With whom did you go to Bulacan?—A. I went to Bulacan with Manuel Carlos and my children.

"Q. How many children do you have?—A. Two, at present.

"Q. Are they your children with Carlos?—A. No.

"Q. With your first husband?—A. With my first husband.

"Q. But is it true, as this paragraph states, that Mr. Rafael Fernandez used to visit you three or five times a week in Bulacan during your stay in said municipality and province?—A. During our stay in Bulacan I did not see any visitor there.

"Q. Is it also true that you and your children were prohibited from receiving any other visitor during your stay in Bulacan, Bulacan, or not?—A. That is not true; why we had visitors such as the neighbors.

"Q. Had any one prohibited you to receive visitors during your stay in Bulacan, Bulacan?—A. No one had mentioned that I could not talk to anybody. I was as free to appear before any person as to the neighbors living around our house.

"Q. Paragraph 2 (h) of this affidavit says: '(h) That in November, 1931, Mr. Fernandez forced Mr. Carlos to submit to a surgical operation in order to prevent him from testifying at once because according to Mr. Fernandez they were not yet ready' what do you say about this paragraph?—A. What I can say about this paragraph is that I do not remember, whether he was operated on because I was sick. I was not interested whether he was there or not.

"Q. Is it true that you know that in November, 1931, Mr. Fernandez compelled Manuel Carlos to submit to a surgical operation?—A. I know absolutely nothing about this medicine or treatment of Carlos.

"Q. Is it true or not that Carlos was operated on in the month of November, 1931?—A. Really I tell you I do not know anything.

"Q. Did you learn that he had been operated on?—A. I know nothing, I tell you that I was sick.

"Q. Where were you then?—A. I was sick in Bulacan, Bulacan.

"Q. After November, 1931, did you continue living together with Manuel Carlos?—A. We lived together up to January of the year 1932.

"Q. But do you know that Manuel Carlos was in some hospital during the month of November, 1931?—A. I have not been informed of his stay in any hospital during the month of November.

"Q. Where was Manuel Carlos in that month?—A. I do not know anything.

"Q. Was he not in Bulacan with you?—A. I can not tell you because I was unconsciously sick. I can not explain to you how I was. I did not know what was the matter with me.

"Q. Do you mean to say that you were very sick in that month?—A. Yes, sir.

"Q. What illness were you suffering during that month of November, madam?—A. I was suffering from heart disease. And I believe I was prohibited absolutely from being informed of anything; I do not know, I can not tell any circumstance.

"Q. During that month of November, did Carlos ever come to see you in Bulacan?—A. He was there, but I can not say what month was that when those things, as his alleged operation, happened, because I was sick.

"Q. But during your stay in Bulacan had not Carlos been absent from that municipality for a considerable length of time?—A. During our stay there, I do not know whether he had left or not because, as I have already said, I was very sick.

"Q. Do you mean to say that you did not notice whether he had been absent for two or three days, for instance?—A. I can not tell anything, I was unconsciously sick.

"Q. Paragraph 3 of this affidavit reads: '3. That I am making this statement freely and voluntarily and without compulsion from anybody, and I am doing this in the interest of truth and justice', what do you say about this paragraph, madam?—A. I can not tell you anything about this paragraph, Mr. Cuyugan, because you know that at that moment when they were reading this paragraph to me I was so very nervous I understood nothing; I don't remember what they said, I was excited at that moment.

"Q. Why were you excited?—A. Because, you know I was so happy because they told us: 'this is sure money' (cuarta na ito) .

"Q. The fourth paragraph of this affidavit reads: 'That I know, write and speak the English language and I have been a public school teacher in the City of Manila and in the provinces for twelve years', what do you say about this?—A. This paragraph is true and it can be investigated that I taught in Cavite as well as in the Districts of San Miguel, in Sampaloc and in Santa Mesa.

"Q. In your letter to the Solicitor-General dated July 10, 1935, you say that you want to have the opportunity to explain personally to the Solicitor-General the circumstances that led you to sign the affidavit Exhibit 2—new trial which you signed before the Notary Public Mr. Francisco G. Perez on May 10, 1935. Now, can you tell us, madam, the circumstances which induced you to sign this affidavit Exhibit 2—new trial?—A. At the beginning, they made me believe that it would be for our good future, mother's and children's.

"Q. Who convinced you to sign the affidavit Exhibit 2new trial?—A. This was ordered by Mr. Vicente del Rosario in the presence of Mr. Francisco G. Perez.

"Q. What did Mr. Vicente del Rosario tell you?—A. Mr. Vicente del Rosario told me that there was nothing to be afraid of this affidavit to be signed because it would do no harm; that everything is and has to be beneficial to us and nothing harmful.

"Q. Where did Mr. Del Rosario tell you that?—A. He told this to me in his very office in the Cu Unjieng building, in the law office of Messrs. Laurel, Del Rosario and Sabido.

"Q. Who were present in the law office when Mr. Del Rosario told you that if you signed this document Exhibit 2—new trial, you would not be harmed and, on the contrary you would be greatly benefited?—A. When Mr. Del Rosario told me that, there were present Mr. Miranda, Attorney Francisco G. Perez and a little farther Mr. Orense.

"Q. Why did you happen to be in the office or law office of Mr. Del Rosario, madam?—A. I went to said office

through Mr. Filoteo Miranda.

"Q. Who is this Mr. Miranda?—A. Mr. Miranda is a person who was living in our house and is a relative of Mr. Carlos.

"Q. Do you mean to say that on May 10, 1935, this Mr. Filoteo Miranda was living in your house?—A. Not only on that date, but also prior thereto, since November 1934, and thereafter, perhaps during the months of March, April and May, he was always talking to me about our future, nothing but the future and future for the well-being of my children.

"Q. Before you went to the law office of Mr. Vicente del Rosario, what had this Mr. Miranda, whom you have mentioned here, told you?—A. Mr. Miranda told me that there, I would sign a letter which would be for our future and that I should not fear any harm.

"Q. What else did he tell you?—A. He also told me that I should not doubt him because he would not deceive me.

"Q. Before going to the law office of Attorney Del Rosario, did Mr. Miranda tell you what benefit would accrue to you if you were to sign the letter mentioned by him?—A. We have not talked absolutely of any amount. He only told me that it would be for my benefit, but mentioned nothing about the amount.

"Q. What is that benefit you refer to, madam?—A. It is the money which he would give us.

"Q. According to Miranda, who is going to give you money?—A. Miranda told me that he would take care of that.

"Q. Before going to Mr. Del Rosario's law office, did you receive any amount?—A. Nothing, absolutely nothing.

"Q. After you had signed Exhibit 2—new trial, did you receive any amount?—A. Neither.

"Q. At the time you signed this Exhibit 2—new trial, did you receive any amount from any body?—A. Nothing.

"Q. You said before that some of the paragraphs which I have read to you are not true, that is to say, they are fables. If they were fables or falsehood, madam, how did you happen to sign this affidavit Exhibit 2—new trial?—A. I signed those stories because these things or fables were not read to me.

"Q. Did you not read this affidavit Exhibit 2—new trial before affixing your signature thereto?—A. I could not read it because I had no eyeglasses, and I do not have eye.glasses. Now, when I read something I borrow eyeglasses from the neighbors.

"Q. Do you mean to say that you affixed your signature to this affidavit Exhibit 2—new trial without reading it or knowing its contents?—A, No, sir.

"Q. What do you mean by 'no, sir'?—A. I mean to say that I am not informed of the contents of the affidavit for the reason that they did not read those parts of the affidavit and that they read to me another thing in my favor. Undoubtedly, I would not have agreed to this story because I have never been before the courts,

"Q. Had you known the contents of this affidavit Exhibit 2—new trial, would you have signed the same?—A. Had I known I would never have signed it because I do not like to swear falsely.

"Q. But madam before you affixed your signature to this affidavit did anybody read to you the contents of the same or not?—A. Before affixing my signature, Mr, Del Rosario read the affidavit to me, but he did not read to me the fables of which I know absolutely nothing.

"Q. In other words, madam, do you want to make us understand that what Mr. Del Rosario said or read on that

occasion was different from what now appears in this affidavit?—A. So I understand. While he was reading the affidavit he was telling me that it would be for our (mother's and children's) benefit.

"Q. You mentioned beforehand that they made you believe that if you were to sign this affidavit Exhibit 2—new trial, you would receive money; who was going to give you money?—A. They told me nothing, or rather he did not tell me where the money, which I have to receive for our benefit, will come from. This is up to them because, in reality, I did not have any interest in the contents of the affidavit, for I would rather beg than meddle with matters I know nothing about, either where to begin or where to end.

"Q. In your letter of July 10, 1935, you said that you learned for the first time that you were going to be a witness in the case of Mariano Cu Unjieng when you read an article in La Vanguardia, do you remember when you read that article, madam?—A. I do not remember what date it was, but I think it was during this month of July or about the end of the month of June. I do not remember anymore. The truth is that I became alarmed when I was reading La Vanguardia. I read that I was going to be a witness in the case of Mariano Cu Unjieng, but I know nothing about said case and this was not our agreement.

"Q. What was your agreement?—A. The agreement was that I should fear nothing; that I will have much to gain and nothing to lose; and, you know, I was in the belief that, through Carlos, they would work out something for our future, but not about the question of Cu Unjieng and Fernandez.

"Q. When you wrote this letter of yours dated July 10, 1935, did anybody induce you to address this letter to the Solicitor-General?—A. Absolutely nobody, Mr. Cuyugan; it was of my own volition because I was very much alarmed. I wrote him the letter because I believed that, with his help, I could avoid testifying in the case of which I know nothing about.

"Q. Do you mean to say that you wrote this letter to him in order to avoid being called as witness in the case of Mariano Cu Unjieng?—A. Yes, sir, because I know absolutely nothing.

"Q. And do you mean to say also that you learned that you were going to be called as a witness in said case through La Vanguardia only?—A. Yes, Mr. Cuyugan.

"Q. When you read the article in La Vanguardia which stated, according to your letter, that you were to be a witness at the new trial of the case of Mariano Cu Unjieng, did you try to investigate from the persons who made you sign Exhibit 2—new trial whether or not what the article says is true?—A. No, sir, because it then occurred to me to write to Honorable Hilado and ask for his advice and help.

"Q. Did you not interview Mr. Del Rosario?—A. No, sir.

"Q. Mr. Francisco G. Perez?—A. Neither.

"Q. And said Mr. Miranda?—A. No. I did not interview him because I then knew that he had deceived me and that the 'sure money' (cuarta na) he was telling me was about making me testify on things about which I absolutely know nothing.

"Q. If, as you say, you read that article in La Vanguardia about the end of the month of June and you became alarmed, why did you write to the Solicitor-General only on July 10?—A. The reason why I have not been able to do so is because I did not receive the newspaper on the same date and I read it later. You know, I was in the provinces. When I read that newspaper, it was already a back number. I was in Zapote and I arrived here on the 7th or 8th and it was then the date when I began to think what I should do.

"Q. Let us clarify this, madam. Do you mean to say that you read the issue of La Vanguardia dated about the end of the month of June on or about July 7th?—A. Yes, sir. It was on July 7th or 8th when I arrived. Had I not gone out of Manila, probably I would have learned about the case and I would have written before that date.

"Q. Do you mean to say that the issue of La Vanguardia read by you was dated on or about the end of

June?—A. I do not remember, Mr. Cuyugan.

"Q. But as a matter of fact, when did you read the article, more or less?—A. More or less, you know, on the 7th of the present month of July, and so I had to wait for a couple of days more to make my situation clear to the Solicitor-General.

"Q. The Solicitor-General answered your letter on July 11, 1935. Have you received the answer?—A. Yes, Mr. Cuyugan, I have received it.

"Q. Do you remember when you received it?—A. I received it on the night of the 11th.

"Q. Can you tell us why you did not come to this office yesterday?—A. No, sir, only now. The reason why I was not able to come yesterday is that I was necessarily detained. You know, my son is included in the "Pioneers" and he asked" me for some money to buy a cap and the insignia because yesterday he had to be at their headquarters here in the Y. M. C. A. to plant a narra tree. As the letter said 'the earlier the better', so I came today.

"Q. Did anybody bring you to this office this morning to interview the Solicitor-General?—A. No one. I asked a policeman where the Bureau of Justice is and he indicated it to me.

"Q. So you came voluntarily this morning?—A. I came voluntarily, Mr. Cuyugan.

"Q. We want to clarify some points of your statement, Madam. You said that the persons, who induced you to sign this document Exhibit 2—new trial, told you that nothing will happen to you and, that, on the contrary, you would be benefited because they would give you money, is it not so?—A. Yes, sir.

"Q. You also said that when you read the article in La Vanguardia to the effect that you were going to be called as witness for Mariano Cu Unjieng in the case pending against him in the Supreme Court you were alarmed?—A. Yes, sir.

"Q. And you became nervous?—A. Yes, sir.

"Q. Now, can you tell us why you did not go to see any of those persons who induced you to sign the affidavit Exhibit 2—new trial as soon as you learned that you were going to be a witness and, on the contrary, you decided to write to the Solicitor-General?—A. I knew that they had deceived me. I do know whether I am right or not; I thought that, in order to make me keep quiet, they might give me money, and when the day comes I do not know what to say, and I have to be there like a fool.

"Q. Do you mean to say that you decided to make statements to the Solicitor-General in order to avoid being called to testify as witness in the Cu Unjieng case?—A. That is what I want to say, sir.

"Q. When you affixed your signature to this affidavit, Exhibit 2—new trial, was Manuel Carlos present?—A. I have not seen him and I do not even care to see him.

"Q. Do you know somebody named Eusebio Navarro?—A. When I was there I did not see him; only those persons whom I have mentioned were, there.

"Q. And do you know somebody by the name of Simeon Gaudines?—A. I do not know him.

"Q. After you had signed Exhibit 2—new trial, do you know if any other person signed with you on that occasion?—A. At that hour, I did not see anybody sign; I only signed my name.

"Q. How many times did you sign?—A. I do not remember how many papers those were.

"Q. More than once?—A. More than once, it seem& to me that I signed three or four times.

"Q. Do you know whether the documents signed by you were the original and carbon copies of the affidavit

Exhibit 2—new trial?—A. I cannot say. I only signed and did not pay attention what kind of paper it was. I tell you I do not know. I am ignorant of it all, Mr. Cuyugan.

"Q. When you arrived at the office of Mr. Del Rosario, was the document prepared already or not yet?—A. When I arrived there, Mr. Del Rosario told me to wait because he was busy. Afterwards, he called me and told me that I should not be afraid because with that, our future was already assured and that everything was already prepared for my signature.

"Q. You said, madam, that someone made you believe that by signing that document you would be benefited. In what would the benefit, accruing to you from signing that document, consist?—A. That individual who spoke to me did not tell me what amount of money or what benefit they would give me; I believed in him because he showed me that he was interested in our future. .

"Q. Aside from you, do you know if any other person has also signed an affidavit in the office of Mr. Del Rosario?—A. Nobody else was there except Messrs. Bel Rosario, Miranda and Orense.

"Q. At what hour of the day did you sign the affidavit Exhibit 2—new trial?—A. At this very moment, I can not tell whether it was in the afternoon or in the morning; I have a very weak memory, I do not remember exactly.

"Q. But was said Miranda with you when you went to the office of Mr. Del Rosario?—A. Yes, sir, he was already in that office when I arrived.

"Q. When Miranda induced you to go to the law office of Mr. Del Rosario, did he not tell you that Carlos was going to sign a document in that office?—A. No, sir,

"Q. Who said 'sure money' (cuarta na) to you when you signed this document Exhibit 2—new trial?—A. That expression was uttered by Miranda and Mr. Del Rosario.

"Q. Aside from what you have stated here, madam, do you want to make further statements?—A. I think I have nothing more to say. All that I believe is just, I have told you already. I am satisfied. I have come in order to be able to ask for protection because I know nothing of the case in which, according to La Vanguardia, I am going to be a witness.

"IN THE ROOM OF THE SOLICITOR-GENERAL.

"MRS. FRANCISCO: Mr. Hilado, we have already finished.

"MR. HILADO: Very many thanks, madam. Do you wish to sign your statement?

"MRS. FRANCISCO: As you wish.

"MR. HILADO: Can you come back Monday to sign your statement?

"MRS. FRANCISCO: On Monday, I shall be unable to come but, yes, on Tuesday morning.

"MR. HILADO: All right, madam, until Tuesday, and many thanks.

"I, Amalia Francisco, under oath, declare that I have read the foregoing consisting of 29 pages; that the answers to the questions propounded to me by Messrs. Serafin P. Hilado and Antonio E. Cuyugan on July 13, 1935, are correct; and that what I have stated in my said answers is the whole truth.

"Manila, July 16, 1935.

(Sgd.). "AMALIA FRANCISCO

"In the presence of

(Sgd.) "AMBROSIO VILLARоба

(Sgd.) "GIL PERALTA.

"Subscribed and sworn to before me on this 16th day of July, 1935. The affiant exhibited to me no cedula certificate because of her sex.

(Sgd.) "ANTONIO E. CUYUGAN

"Assistant Attorney, Bureau of Justice

"Authorized under sec. 1665,

"Administrative Code, to administer oaths."

(Part III, pages 8-42, Govt. Printed Oppositions.)

To counteract the effects of Amalia Francisco's letter and statements just transcribed, the defense has presented the affidavits of the attorney for the defense Mr. Eusebio Orense, and of Attorney Vicente del Rosario and the new affidavit of the said woman dated August 2, 1935. What these affidavits prove, if any, is that Amalia Francisco is a woman who cannot be believed at all.

It is absolutely incredible for the Solicitor-General and Assistant Attorney Cuyugan, who had intervened in the taking of Amalia Francisco's statement, to have tolerated or permitted the prostitution of the truth in the form attributed to them by said woman. Neither one nor the other was interested in this case, except as officers of the law, whose duty is to see that justice be duly administered without distorting the truth. From the questions made to said woman it is clearly inferred that everything has been done in the most straightforward manner, without pressure nor any objectionable hint on the part of anybody, which precludes the idea that she has been intimidated to state what she then stated. The mention made of the name of Attorney Eusebio Orense, could have been an error on the part of said woman because she herself affirms in her last statement that a certain "Eusebio" was really present at the incident referred to by her in her cross-examination, but that the surname is not Orense but Navarro.

The statement made by Amalia Francisco in the Bureau of Justice is corroborated, to a certain extent, by that made by her on August 2, 1935, because Eusebio Navarro and Attorney Vicente del Rosario were, in fact, present at the taking of her affidavit of May 10, 1935, (Exhibit 2—new trial); and it is not absolutely improbable that Attorney Del Rosario became interested in the appearance of Amalia Francisco on the scene as a new witness, because according to Exhibits D and E attached to the, private prosecution's opposition of July 30, 1935, he is married to the sister of Jose G. Barretto who, in turn is married to the sister of the appellant.

But even if these details were ignored, Amalia Francisco's affidavit of August 2, 1935, is of no value, because it is not corroborated. It is neither open nor frank; for it hides essential facts such as the names of the lawyer and of the person to whom she imputes the fact of having induced her to commit perjury.

If all the foregoing were still insufficient to show that Amalia Francisco's assertions in her said affidavit of August 2, 1935, are false and that said woman can not be believed even if she testifies under oath, there is this other letter of hers—in her own handwriting—which needs no comment whatsoever:

"(Confidential)

"Manila, P. I.

"Aug. 1st, 1935.

"To the Hon. Serafin Hilado,

"Solicitor-General,

"Bureau of Justice,

"Manila, P. I.

"Dear Sir:

"I have the honor to inform you that when I returned home today from the Bureau of Justice after an interview with Mr. Antonio Cuyugan, I met Mr. Miranda who was also accompanied by another man whose name is Perfecto Padilla, and they both insisted that I should withdraw the statement I made under oath before your honor and Mr. Cuyugan. And that if I should do so I would be well rewarded by their client Mr. Mariano Cu Unjieng. This was done under threat of imminent death with his revolver by Mr. Miranda, if I should refuse to yield to his entreaties.

"I earnestly request your honor to do whatever is possible to have the arm taken away from him temporarily so that no untoward incident might obstruct the proper process of justice.

"I stand ready to furnish you with more details on this matter if necessary.

"My new address (temporary) is 1150 Tuberias, Quiapo.

"Yours respectfully,

(Sgd.) "AMALIA FRANCISCO"

(Exhibits E and E-1 annexed to the reply of the SolicitorGeneral of August 10, 1935.)

If more is wanted, there are also the statements of said woman made in the office of the secret service where she went to demand protection on July 22 and August 3, 1935, of which the following excerpts form part:

"Q. Why are you here in this office, do you have any complaint to make?—A. The reasons why I come to this office because I was alarmed when the lady in my house told me that Mr. Filoteo Miranda came to our house, looking for me. He asked the lady where I was and she told him that I was in Cavite. Mr. Miranda showed a bundle of papers to my lady companion in the house telling her that Look at Amalia, after she had signed an affidavit in favor of Cu Unjieng she signed again another affidavit for the other party against Cu Unjieng. I want to see her because if she is not going to interview me and have an arrangement I do not care though she is surrounded by Constabulary I am going to kill her. She asked me to go to Cu Unjieng to ask money for her and now that she had signed another affidavit for the other party, Cu Unjieng is very mad of me. This is the bundle of papers Mr. Cu Unjieng gave me.

"Q. Did you go to the Bureau of Justice and made another complaint concerning this Filoteo Miranda?—A. Yes, sir, because I was induced by Filoteo Miranda and Attorney Del Rosario to sign an affidavit favoring Cu Unjieng in his latest case. I signed this affidavit without knowing the contents thereof.

"Q. Did they read to you the contents of that affidavit before you signed it?—A. They read something in that affidavit which I do not know whether is the real contents of that affidavit or not. They told me that I can obtain money from Manuel Carlos my former common law husband who is a witness of Cu Unjieng, as I am in need of money and thinking that this will not prejudice myself I was forced to sign this affidavit.

"Q. Have you ever talked with Manuel Carlos with regards to the signing of this affidavit?—A. We have never seen each other since 1933.

"Q. How long have you known this Filoteo Miranda?—A. I have known him since November, 1934, when he and his family lived in my house.

"Q. Do you know if Filoteo Miranda has any revolver?—A. I used to see one on his person.

"Q. Is your purpose in making this complaint is to disregard the affidavit which you had signed?—A. Yes, sir, and one more I wish to ask for a police protection as this Filoteo Miranda threatens to kill me.

"Q. Do you receive any money as compensation after you have signed that affidavit from Attorney Del Rosario

and Filoteo Miranda?—A. I remember that I received two or three times P12.00 from Attorney Del Rosario for my transportation expenses.

"Q. We received your letter dated August 1, 1935, stating that one day while you were on your way home from the office of the Solicitor-General particularly to the office of Mr. Cuyugan, you met Mr. Filoteo Miranda and one by the name of Perfecto Padilla, and that they both insisted that you withdraw your statement made under oath to Attorney Cuyugan of the Bureau of Justice and this was done under imminent threat of his revolver, is this true?—A. Yes.

"Q. When and where did you meet these two fellows mentioned above?—A. I met them at about 10 a. m. August 1, 1935. I do not know the exact place where we met, but I remember that I was on my way home to Calle Tuberias.

"Q. Have you any witness to the effect when Mr. Miranda threatened you with his revolver?—A. No, because I was alone at the time.

"Q. Did he pull out his revolver from the holster on that occasion to threaten you?—A. No, sir.

"Q. Did you see him hold the handle of his revolver while talking with you?—A. No, sir.

"Q. You stated in your letter that he threatened you with his revolver, is it not?—A. Yes, sir. He stated that if I don't withdraw the statement I made to the Bureau of Justice, it will be a great shame on this part and that if so happened he is going to kill me, and I thought probably he is going to shoot me with his revolver.

"Q. You were given a police protection at the same date and refused same so as to avoid scandal is it not?—A. Yes, sir.

"Q. Are you willing to file a complaint of threat against Mr. Filoteo Miranda at the City Fiscal's office?—A. No, sir, as I think that he was only talking to me at that time not in his full knowledge as he is drunk at that time and he might ignore what he had said to me. Furthermore to avoid further trouble I want this to be pacified in some manner, and not by bringing the case to the court."

(Exhibits D and F annexed to the reply of the Solicitor-General of August 10, 1935.)

The first motion is likewise based on what the defense claims to be new evidence discovered after the trial held in the court below. Said evidence, according to the defense, consists in that the signature of Sabina Sioco Viuda de Escaler, appearing at the foot of Exhibit 3—new trial, is a forgery and that by reason of the fact that Rafael Fernandez accompanied the woman who subscribed said document as Sabina Sioco, in the presence of the notary public before whom the same was ratified, when in truth and in fact she was not Sabina Sioco, he is and must be the only and true principal author of the forgeries, in connivance with Manuel Carlos; and that judging from the statements of Rafael Fernandez and the letters written by him to Benito Legarda (Exhibits 6—new trial, 7—new trial, 8—new trial, 9—new trial and 10—new trial), wherein he made Legarda understand that he was receiving a monthly subsidy of several thousand pesos from the law office of Dewitt, Perkins & Brady, his testimony and that of several witnesses for the prosecution are not based on truth but are the result of some payment or reward.

The above-stated facts can exert no influence upon the resolution of said motion of the appellant, because whether or not the signature of Sabina Sioco Viuda de Escaler is forged or imitated, and whether or not Fernandez has written the letters, Exhibits 6, 7, 8 and 9—new trial, to Benito Legarda and admitted to the latter that the law office of DeWitt, Perkins & Brady was paying him a subsidy of P3,000 a month (Exhibit 10—new trial), for the support of the witnesses for the prosecution, which was emphatically denied by one of the members of said law office, by Rafael Fernandez himself and by the receiver of the insolvency of Fernandez, at any rate, there remains the fact that the appellant, knowing that the warehouse receipts and other documents of the Pampanga Sugar Development

Co., Inc., which he pledged to the banks in order to obtain money from the same, by himself and through Rafael Fernandez, were spurious, made use thereof for the said purpose.

Moreover, the facts above referred to are not new inasmuch as they had already been known to all the parties in interest in this case long before the decision appealed from was rendered by the court below, so much so that on December 4, 1933, the defense, relying upon the first fact which it then alleged to be a newly discovered evidence, moved for the reopening of the trial (pages 619-632, of criminal case No. 42649; G. R. No. 41200); and the motion was denied on the 13th of December of the said year, for the reasons set forth in the order of said date; and relying also upon the second fact, or that referring to Benito Legarda, which it likewise alleged to be newly discovered evidence, on January 3, 1934, it moved for the reopening of the trial so that said evidence might be presented (pages 694-698 of criminal case No. 42649, G. R. No. 41200), and its motion was denied on the 8th of the same month and year, for the reasons set forth in the order issued on said date.

Summarizing all that has heretofore been said, the recantation of Manuel Carlos, the revelation of Amalia Francisco, and the other facts alleged by the defense as ground for its motion for new trial do not constitute and cannot constitute newly discovered evidence sufficient in law to warrant the reopening of the case or the holding of a new trial.

The second motion for new trial is based upon the alleged recantation of Perfecto Padilla. This witness testified that on June 16, 1931, Rafael Fernandez told him to see the appellant to ask him for some warehouse receipts; and that the warehouse receipts then delivered to him by the appellant were for sugar the amount of which ranged from 63 to 64 thousand piculs. He was referring to the warehouse receipts marked in the record as Exhibits A, A-1 to A-63.

Now he states in his recantation that what he then declared is not true; that if he so testified, it was solely at the request of Rafael Fernandez who then told him, with tears in his eyes, that as his employee Padilla was morally obliged to help Fernandez carry out his plan against the Cu Unjieng family, and thus save him from jail; that, personally, he had nothing to do with either the appellant or his father; that he had not even seen the warehouse receipts referred to by him in his testimony; and that when he told Rafael Fernandez that he would not testify against Cu Unjieng, unless his real purpose were revealed to him, said Rafael Fernandez secretly told him that Mariano Cu Unjieng did not, in truth and in fact, take part in the forgery, but that, if he so acted, it was for the purpose of implicating the Cu Unjiengs in the case so that they would later be compelled to pay the banks, in which case, he would be acquitted.

What has been stated on page 9 of this resolution seems sufficient to destroy this alleged recantation of Perfecto Padilla. But, if not, attention is invited to the following answers of said witness to some questions propounded to him while he was testifying in the case on February 5, 1932:

"Q. When did you confer with Mr. DeWitt as to what you were to testify in this case?—A. Do you mean to say prior to my testimony yesterday?

"Q. Yes.—A. On one occasion, I went to the office of Mr. DeWitt sometime last December; the second time I went there was about four or five days ago.

"Q. Did you not say that it was the day before yesterday that you had a conference with Mr. DeWitt?—A. That was the second time. I refer to that.

"Q. Did you sign any affidavit on that occasion?—A. Yes, sir."

Q. Was it yesterday or the day before yesterday?—A. I believe it was the day before yesterday (t. s. n., pages 1207, 1208).

"Q. Who prepared the affidavit?—A. He asked me questions; he asked me many things and I answered him.

"Q. To whom did you refer when you said he asked questions?—A. To Mr. DeWitt.

"Q. Was Mr. Rodas present when Mr. DeWitt was asking you questions?—A. No, sir; he1 was not.

"Q. Were the questions and answers taken in shorthand or on the typewriter?—A. They were taken by the lady stenographer referred to by me.

"Q. After they had been transcribed, did you make any corrections?—A. No, sir; I did not.

"Q. Did the stenographer make any corrections?—A. I do not know whether she did; I only signed the affidavit.

"Q. Did she read it to you or did you read it yourself?—A. I read it myself. (t. s. n., page 1209).

"Q. Had there been any conversation with you as to whether or not you could change your statement upon taking the witness stand?—A. Conversation with whom?

"Q. Conversation with anybody.—A. When Mr. DeWitt took that affidavit, he told me to tell the truth and nothing but the truth, and I told the whole truth (t. s. n., page 1210).

"Q. Did you not consider that the requirement of making you sign an affidavit immediately before you sat on the witness stand was a reflection on your honesty?

"FISCAL: I object to the question because in the first place, the opinion of the witness is asked and, in the second place, Your Honor, the fact that the law is complied with and that the witness is required to take an oath is not a reflection on his honesty.

"COURT: The witness may answer.—A. I say nothing but the truth and I do not think that is a reflection on my honesty.

"Q. When you signed that affidavit, you knew that you would never dare to say anything different from what you had stated in that affidavit?

"MR. DEWITT: Objection for being improper in cross-examination.

"COURT: The witness may answer.—A. I can not answer that, I know nothing about law; I have not studied law (t. s. n., pages 1212, 1213).

"Q. But you know that if you swear to certain facts and afterwards, on the following day, you swear to facts different from those you swore to on the preceding day, you run the risk of being prosecuted for perjury?

"MR. DEWITT: Objection because it asks for a conclusion of the witness.

"COURT: The witness may answer.—A. What I know is that if I declare something false the law would punish me.

"Q. Do you know that if you swear to certain facts one day and swear to distinct or contradictory facts on the following day, that would mean that either one or the other of what you have sworn to is false?

"FISCAL: Objection because the conclusion of the witness is asked.

"COURT: The witness may answer.—A. I do not know anything about that. As I have already said if I state anything false here I would run the risk of being punished (t. s. n., page 1214).

"Q. Do you know that if you swear to certain facts one day and on the following day you swear to distinct and contradictory facts, that would mean that either one or the other of what you have sworn to is false?—A. I believe that what I am saying here is, in no way, different from what I have said to Mr. DeWitt. I am telling the

truth and the whole truth; I am telling the truth and nothing but the truth. That is all (t. s. n., pages 1215, 1216).

"Q. Isn't it a fact that when Mr. DeWitt took your affidavit day before yesterday he had before him the transcript of the statement which you made before the Fiscal?— A. This is what happened. When I reached the office of Mr. DeWitt, after telling him I could make a statement, of the whole truth, he called up his stenographer and after he approached the table and he began to question me I began to answer and they took my answers and then after I have testified he went to his office for the transcription (t. s. n., page 1222)."

After reading the foregoing quotation and the part of the testimony of Perfecto Padilla which, for the sake of brevity, has not been quoted here, one will easily see that he has not been compelled nor taught-to testify against the appellant. His entire testimony shows sincerity and frankness; and it must be remembered that before testifying in court he also declared substantially the same things before the City Fiscal and before Assistant City Fiscal Mr. Rodas, now Judge of First Instance. Neither one of said two officials would have tolerated Fernandez to exert pressure upon him one way or the other in his presence, to compel him to testify in one sense or otherwise; and it has already been said that the testimony of said witness has been corroborated by the witnesses and the evidence stated on page 9 of this resolution.

Perfecto Padilla's silence for three years, without revealing what he now reveals in his affidavit recanting from what he testified at the trial and in the presence of the two above mentioned fiscals is the best rebuttal that can be offered against his recantation. In said recantation, he states, among other things, as follows:

"I have decided to come forward on my own volition to state before the authorities that what I stated against Mr. Cu Unjieng are all false, and I do this now to secure peace for my conscience and my soul and because I do not want to be the cause of the ruin of an innocent man." (Exhibit 11—new trial.)

With reason, the Solicitor-General asks in his opposition:

"Where was Padilla's soul and conscience on March 26 of this year when this court affirmed the decision of the lower court? Why did Padilla wait three years and four months before disclosing the things mentioned in his affidavit of June 29, 1935?"

If his conscience could remain tranquil for so long a time, it means that his feeling the pangs of remorse without any reason whatsoever on June 29th of said year, is a myth.

One more thing is noted in the said affidavit of Perfecto Padilla and in his calculated silence as to the name of the relative who, according to him, had advised him not to take step of making a recantation until after the decision of this, court is known. Such behavior on his part detracts much from his sincerity and renders his recantation unworthy of consideration for a new reason: It lacks corroboration.

Aside from all the foregoing, with or without the testimony of Perfecto Padilla given at the trial, the evidence is, at any rate, sufficient to support the findings of the court. The appellant made use of the warehouse receipts and other forged documents in order to obtain money from the banks, knowing that the same were not genuine but forgeries. See what has been said regarding this point on pages 3, 4, 5, 6, 7, 8 and 12 of this resolution.

The third motion for new trial is based on a statement of one Julio Sampang whom the defense neither presented nor wanted to present as witness at the trial of the case, notwithstanding the fact that it could have very well done so. The following order of the court below speaks of the incident relative to said Julio Sampang:

"ORDER

"Mr. A. D. Gibbs, one of the attorneys for the defense, has filed a motion in this case, asking first, that the court exercise its discretion in favor of the defense by requiring the prosecution to place the said Sampang (Julio Sampang) on the witness stand for cross-examination by the defense, and second, that if the court does

not feel justified in requiring the prosecution to call him as its witness, that the Honorable Court call the said Sampang as its own witness subject to examination and/or cross-examination and/or impeachment by either the prosecution or defense or by both of them."

"This court does not choose to compel the prosecution to present said witness nor does it feel that any obligation rests upon the court to call Sampang as its own witness.

"Wherefore, said motion is denied.

"Manila, August 28, 1933."

After other incidents not mentioned here for being immaterial, the attorney for the herein appellant made the following statement during the trial:

"We might call Julio Sampang as our witness if we had the affidavit so we will know in what manner he has committed himself in the examination made before the Notary Public" (t. s. n., page 20021).

It follows from the foregoing that as the defense had all the opportunity to examine Julio Sampang and to present him as a witness, there having been nothing to prevent it from so doing, but did not avail itself of said opportunity, its decision to present him now as a witness is too late. Under the law, the testimony of said person is not, and can not be newly discovered evidence that may warrant the holding of a second trial.

The rule followed in this jurisdiction is that no motion for a new trial should be granted unless the following conditions exist: (1) the evidence alleged to be new must be that which is discovered after the trial; (2) said evidence could not be discovered before the trial notwithstanding the diligence and efforts made by the accused to that end; and (3) it must be material and not merely collateral corroborative or cumulative (U. S. vs. Luzon, 4 Phil., 343; U. S. vs. Pico, 15 Phil., 549).

If it should perchance be alleged that it was an error on the part of the defense not to have taken Julio Sampang's testimony before, the governing rule is also that the errors or mistakes committed in the handling of a case in the first instance cannot constitute a ground for a new trial (U. S. vs. Umali, 15 Phil., 33; People vs. Manzanilla, 43 Phil., 167).

The testimony of Julio Sampang is not evidence discovered after the trial. The defense could have had it if it wanted to, because it had plenty of opportunity to do so from the time the above-stated incident was raised, which took place in August 1933, up to the time judgment was rendered in the case, which was on January 8, 1934, more particularly so if it is considered that the prosecution informed the court and the defense that it would not present said Julio Sampang as witness, assuming naturally that he would not wish to incriminate himself.

After all, the testimony of said witness is neither essential nor material but merely collateral or cumulative, so much so that the prosecution could dispense, as in fact it did dispense with the same without in the least weakening its case; and this court did not, as a matter of fact, make the slightest mention of the intervention of said witness in the manipulation of some of the documents with which, directly or indirectly, the frauds complained of could be perpetrated.

The fourth motion is based on the alleged recantation of Rafael Fernandez. This recantation literally reads as follows:

"To Whom It May Concern:

"Now that I am about to enter Bilibid Prisons to serve my sentence, I, Rafael Fernandez of legal age residing in the City of Manila have decided to make a revelation of the true facts and statements in the case People of the P. I. vs. Mariano Cu Unjieng. I must state the following facts:

"(1) That Mariano Cu Unjieng never knew at any and all time during our friendly or business relations the fraud on forged quedans or shares. That said Mariano Cu Unjieng had nothing to do with the falsification of quedans or shares and was victim the same as his father, Mr. G. A. Cu Unjieng.

"(2) That my relationship with either Mariano or G. A. Cu Unjieng had always been that of a debtor and creditor the same as my relations with the banks, or Dee C. Chuan or Palanca or Rufino. The notes, documents, and letters signed by me in favor of the Cu Unjiengs were done in the ordinary course of our business relations.

"(3) That all payments made to them were on account of interest, commissions and principal due to my legal indebtedness to them.

"(4) That upon the discovery of the fraud I was indebted to the Cu Unjiengs including the Yek Tong Lin over P1,000,000. I had asked them not to sue me criminally at the time of the discovery of the fraud on July 8, 1931.

"(5) That Mariano or G. A. Cu Unjieng had never been my partners in the sugar business as alleged by the prosecution or as alleged by me in the testimony during the trial of Mariano.

"(6) That all properties acquired by me or by my employees or my friends were solely mine and not Mariano Cu Unjieng. They were for my benefit and not for the Cu Unjiengs.

"(7) That I have decided to down Mariano Cu Unjieng because he refused to post a bond for me and our relations became strained after the discovery of the fraud.

"(8) That the National City Bank and the Hongkong Bank knew perfectly well that the quedans pledged there by the Cu Unjiengs were mine and were merely repledged because I have discussed this question several times with the Managers of said Banks and that said banks gave me credit in order to get the business of loaning from the Cu Unjiengs.

"(9) That the forging of quedans and shares certificates and harvest contracts on crop loans were entirely unknown to Mariano Cu Unjieng or his father Mr. G. A. Cu Unjieng.

"(10) That the testimony given by Padilla and Carlos as well as mine were untrue and false.

"(11) That I am willing and decided and not afraid to take the consequences in testifying and taking the witness stand if called to in any trial against Mariano Cu Unjieng.

"In truth of this, I have signed this document containing three pages in my own handwriting.

(Sgd.) "RAFAEL FERNANDEZ

"UNITED STATES OF AMERICA

"PHILIPPINE ISLANDS SS.

"CITY OF MANILA

"At the City of Manila, P. I., this 19th day of August, 1935, personally appeared before me Mr. Rafael Fernandez, personally known to me to be the same person who subscribed and swore F. G. Perez 8/19/35 to the foregoing document and acknowledged the same as his voluntary act and deed. He exhibited to me his cedula certificate No. Exempt for being insolvent and therefore a pauper, F. G. Perez 8/19/35 issued at Manila, P. I., on, 1935.

(Sgd.) "FRANCISCO G. PEREZ

"Notary Public

"Commission expires Dec. 31, 1936

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"S. 1935. (Seal)

"(20 cts. I. R. Stamp, Aug. 19, 1935)"

As may be seen, said recantation has no date; but if the verification appearing at the foot thereof were to be given credit, it was subscribed, sworn to, and ratified by Rafael Fernandez on August 19, 1935. To disprove it, the Solicitor-General and the attorneys for the private prosecution, aside from the reasons set forth in their written opposition of September 18, 1935, have filed the affidavit of the Solicitor-General and of two of said attorneys—Perkins and Ponce Enrile—which, literally reads as follows:

"AFFIDAVIT

"Serafin Hilado, E. A. Perkins and A. Ponce Enrile, hereinafter referred to by their respective surnames, each being separately and duly sworn, depose and say:

"1. That affiant Hilado is and was at all times mentioned in this affidavit, Solicitor-General of the Philippine Islands, with offices in the Department of Justice in the City of Manila; that affiants Perkins and Ponce Enrile are two of the attorneys for the private, prosecution in the above entitled case.

"2. That on the 21st day of August, 1935, Rafael Fernandez was committed to Bilibid Prison by the Honorable Francisco Zandueta, Judge of the Court of First Instance then presiding in Sala III of the Court of First Instance of Manila, as a result of final judgment entered in Criminal Cases Nos. 42244 and 42388 entitled 'People of the Philippine Islands versus Rafael Fernandez, the judgments in which had been confirmed by the Supreme Court of the Philippine Islands.

"3. That said commitment took place in open court on said morning of the said 21st day of August, 1935, at about the hour of 10:30, at which time the said Fernandez was remanded to the custody of the Sheriff of the City of Manila and was thereupon taken into actual custody by Deputy Sheriff Pastor Enriquez, but, at the request of Fernandez, as Fernandez subsequently communicated to affiants, the said Judge instructed the Sheriff to permit Fernandez to confer with the Solicitor-General and the private prosecution prior to the hour of twelve o'clock noon of said day.

"4. That shortly before 11:00 a. m. of the 21st day of August, 1935, affiant Hilado received a telephone call inquiring whether he could receive Rafael Fernandez, and naturally he consented to do so; that affiant Perkins had been asked on behalf of Rafael Fernandez to be present at the conference that the latter was to have with the Solicitor General that morning; that at about, or shortly after 11:00 a. m. of said day, affiant Perkins appeared in the office of affiant Hilado and shortly thereafter Rafael Fernandez entered accompanied by Attorney Prudencio Cagampan, (an attorney-at-law who clearly stated that his appearance was in the capacity of a friend rather than that of an attorney of Rafael Fernandez); that affiant Ponce Enrile entered the office of affiant Hilado in connection with another case, and as he is a member of the firm of DeWitt, Perkins and Ponce Enrile, he was asked to join the conference; and that during the conference in the office of affiant Hilado, Deputy Sheriff Pastor Enriquez, in whose custody Fernandez was at that time, remained outside of the door of the private office of affiant Hilado.

"5. That upon the parties being gathered together in the office of the Solicitor General, there being present as aforesaid affiants Hilado, Perkins and Ponce Enrile, together with the said Fernandez and Cagampan both Cagampan and Fernandez requested affiant Hilado to agree to a petition of Fernandez that he be given a few more days to wind up his personal affairs before he be committed to prison, to which affiant Hilado replied that it was a matter entirely under the control of the court; that Attorney Cagampan and Fernandez thereupon informed affiant Hilado that on that same morning a similar petition had been denied, but that the trial court had signified its willingness to grant the petition if the Solicitor-General (affiant Hilado) would give his conformity thereto; that affiant Hilado answered that he did not believe that his recommendation would be

given any decisive weight by the Judge, but that even if the court would be inclined to give it much importance, the reason alleged in the proposed motion for obtaining the extension of time which was being asked, was not weighty enough to warrant or justify him in giving his consent thereto; that Fernandez then stated that there was a very powerful reason why the Government should agree to his request but he could not make it appear in his motion; that on being asked by affiant Hilado what it was, he (Fernandez) replied that he had been asked by one Vicente del Rosario on behalf of Mariano Cu Unjieng—to whom the said Vicente del Rosario is related by marriage—to sign before entering Bilibid, a false affidavit exculpating the Cu Unjiengs and inculcating himself alone for the crime for which Mariano Cu Unjieng had been convicted in the above entitled case; that the affidavit was to be in his (Fernandez's) own handwriting and to be of the same tenor as the rough draft which had been written out and shown to him by said Vicente del Rosario, and that if Fernandez would execute such affidavit he would be paid handsomely for doing it; that while the amount had not yet been fixed he believed that the Cu Unjiengs would come across with at least P20,000.00; that in order to obtain additional proof of the improper means being adopted by Cu Unjieng, he (Fernandez) had indicated to Del Rosario his willingness to sign such an affidavit at the same time that he would receive the money; that up to the time of said conference (i. e., the one then taking place—August 21, 1935) he had not actually signed the affidavit and, it was for that reason that he would like to have a few more days in order that in cooperation with the Government detectives, he could execute the affidavit, receive the money and turn it over immediately to the Government; and that the reason why he wanted to carry out this plan was that he desired to demonstrate to the public in general as his last act before entering Bilibid Prison, that the Cu Unjiengs were in fact the 'eabezas pensantes' in the plan which had resulted in his downfall.

"6. That after hearing the plan of Fernandez, affiant Hilado asked him whether he had in his possession the draft from which the affidavit was to be copied, and he answered that he had deposited it with a friend in the Bicol region, and that he needed two or three days to go there and get it, and a couple of days more to finally carry out his whole scheme.

"7. That at the request of affiant Hilado, the said Fernandez and his friend Cagampan, retired from the office of the Solicitor-General and waited just outside the door with the deputy sheriff, while the three affiants conferred among themselves; that affiant Hilado thereupon telephoned to Judge Zandueta, who was the one who issued the order for the commitment of Fernandez, and asked him whether it was true that said Judge had told Fernandez and his attorney that if the Solicitor-General would agree to it, Judge Zandueta would grant the petition of Fernandez for an extension of time to enter Bilibid Prison, to which Judge Zandueta replied to affiant Hilado that it was not true, for he (the Judge) believed that he had no jurisdiction to grant the petition.

"8. That because of the well sustained opinion of the Judge, that he had no jurisdiction to grant the petition, and because they did not want to participate in any plan which would conflict with the mandate of the Court of First Instance of Manila directing the commitment of Fernandez to Bilibid, the three affiants decided not to agree to the petition of Fernandez; that accordingly Fernandez was called back into the office of affiant Hilado and he and his friend Cagampan were informed by affiant Hilado that their request could not be granted; that thereupon the conference terminated, and Fernandez, accompanied by the deputy sheriff, left the Department of Justice at about 12:00 noon en route to Bilibid Prison.

"Manila, P. I., September 20th, 1935.

(Sgd.) "S. P. Hilado

(Sgd.) "E. A. Perkins

(Sgd.) "Alf. Ponce Enrile

"Subscribed and sworn to before me, etc." (Exhibit A annexed to the opposition of September 18, 1935).

Placed in the alternative of having to choose between the affirmation of Fernandez in his recantation and his statement before the Solicitor-General and attorneys Perkins and Ponce Enrile appearing in their said affidavit, the

court is inclined to choose the latter, because under the circumstances in which Fernandez found himself, financially bankrupt and ruined and placed in a situation where nobody could save him from jail, he considered himself justified, in his opinion, to take the best possible advantage of his said situation. Between entering jail to stay there for a good number of years without leaving anything to his family from which he was, perforce, to be separated, and entering jail leaving them something, the latter is undoubtedly better, more positive and more practical. Therefore, it can be reasonably stated, having in mind the statements of Rafael Fernandez to the Solicitor-General and to attorneys Perkins and Ponce Enrile, that it was the gift that moved him to copy and sign his recantation.

At any rate, even granting that the recantation in question is not entirely a farce, it does not and can. not alter, the result of the case because, for the lengthy reasons already stated, the appellant, with full knowledge of the flaw therein, personally or through Rafael Fernandez, made use of the aforementioned warehouse receipts and other forged documents in order to obtain overdrafts or loans from the banks. To avoid repetition, see what has been said regarding this same point from page 3 to page 18 of this resolution.

Rafael Fernandez has undoubtedly exaggerated some of the facts of which he testified, and it is not strange that he did so because it seems to be very human that a criminal should not wish to appear as he is in reality. The court did not lose sight of this consideration and so it did not believe absolutely all of what said person had testified at the trial. As in the cases of Perfecto Padilla and Manuel Carlos, it believed only that part of his testimony satisfactorily corroborated by other evidence. It is a mistake to affirm absolutely that he who lies once, always lies, or that a person can not be believed if, testifying about several matters, he is caught lying in some of them. There are not a few cases where one keeps silent and says something different from what he should say for the sake of truth, or paints which more vivid hues what another has done if he can thereby improve his situation. The prevailing rule in this jurisdiction, which is the same one followed in this case, is that enunciated in the case of United States vs. Ambrosio and Falsario (17 Phil., 295), and reiterated in the case of United States vs. Remigio (37 Phil., 599), and in the various cases therein cited. In the said Ambrosio and Falsario case, it was stated:

"The testimony of an accomplice, if properly and sufficiently corroborated, may be used as evidence for the conviction of a person charged with murder." (Syllabus.)

"It is unquestionably true that the testimony of an accomplice must be taken with great care and caution. It must be assayed and weighed with scrupulous care. The corroborating testimony must be strong and convincing. It is also true, however, that when, the testimony of an accomplice is corroborated by unimpeachable testimony and by strong circumstances, it may be given its due weight and force against the person in regard to whom it is presented." (Body of the decision.)

And in the case of Remigio, it was further held:

"The testimony of an accomplice is sufficient to justify conviction if it is corroborated absolutely or even to such an extent as is indicative of trustworthiness. This is true even if the accomplice has made previous statements inconsistent with his testimony at the trial and such inconsistencies are satisfactorily explained."

Before closing, it should be stated that on October 7, 1935, the defense again filed an extensive memorandum in writing. This is contrary to rule 39 of the Rules of this court. If such practice were tolerated, suits and proceedings would become interminable and unnecessarily voluminous, and in order not to establish a bad precedent, said memorandum should be ordered stricken out from the record.

For all the foregoing, the court resolves to deny, as it hereby denies, the, above-stated four motions for new trial of the appellant; and orders that said motions, that is, that of June 15, 1935, and the first, second and third supplemental motions of July 13th, August 14th, and September 14th, respectively, of said year, together with all

the annexa thereto, be turned over to the Solicitor General so that, after due investigation, the person concerned may bring the corresponding criminal action for perjury against those persons found to be responsible for said crime; and orders, finally, that the memorandum of the defense filed on October 7, 1935, be stricken out from the record. So ordered.

Villa-Real, J., concurs.

CONCURRING

MALCOLM, J.,

An order dealing with the motions for a new trial has been prepared by Mr. Justice Diaz, a member of the court with wide experience in the field of criminal law, who has spent the better part of a year in studying this case and a related case. Under such circumstances it would be presumptuous for me to enter upon a minute analysis of the facts and of the law applicable thereto. I confine myself to stating that I am in full accord with Mr. Justice Diaz in the action taken in so far as relating specifically to the accused Mariano Cu Unjieng. My only purpose in concurring specially is to express my views on the proper approach of the appellate court, after a judgment of conviction has been sustained, to the consideration of recanting testimony. I am of the belief that the court's attitude on the subject of recanting testimony means everything to the administration of justice in the Philippines and to the maintenance of equality before the law.

The first point that intrigues me concerns the fact that no less than four motions for a new trial have been offered, the last three supplementary ones, without asking leave of the court. I consider this the sanctioning of bad practice. Section 42 of the Code of Criminal Procedure speaks of a reopening of the case upon the ground of newly discovered evidence" and of "the motion." It is my understanding that this means that all the grounds intended to be relied upon must be included in one motion, except that with the permission of the court first had a motion might be permitted to be amended.

But the foregoing is admittedly a minor consideration. The main question is if the four motions asking for a new trial should be granted on the merits. In support of the same are certain affidavits, principally those of Rafael Fernandez, Manuel Carlos, Perfecto Padilla, and Amalia Francisco. The first three will be recalled as witnesses for the prosecution, Amalia Francisco is a new witness who, as the mistress of Manuel Carlos, attempts to corroborate his recantation.

As indicated in the beginning it is not proposed herein to discuss these affidavits elaborately. Nevertheless it is worthy of note with reference to the affidavit of Rafael Fernandez, as brought out by the affidavits of Solicitor General Serafin Hilado and Attorneys E. A. Perkins and A. Ponce Enrie, that Fernandez made it appear to them that he executed the affidavit because "he would be paid handsomely for doing it." The affidavit of Manuel Carlos purports to state that after learning that Mr. Mariano Cu Unjieng was convicted by the Supreme Court for the falsification of sugar quotas which Mr. Rafael Fernandez negotiated with the former, my conscience has become restless for I have then realized that I had committed an unpardonable wrong to Mr. Cu Unjieng. But aside from the point that some of the facts alleged in the affidavit of Carlos can scarcely be true, his testimony at the trial and on appeal, like that of Rafael Fernandez, was accepted only where supported by documents and other unimpeachable testimony. As to Perfecto Padilla, while on the witness stand he was put through a rigorous examination which failed to shake his testimony in any important respect, so that it is curious that after waiting so long he now finds it necessary to repudiate that same testimony. Finally it is to be noted that Amalia Francisco after making her affidavit in favor of the accused, wrote the Solicitor-General saying that "not

knowing anything regarding the contents of said affidavit, I wish to state herewith, that I signed same without full knowledge of what it contained." Later in answer to a question of the Solicitor-General as to whether certain persons were going to give her money, she replied: "Yes, sir, and they said not to worry about money because I was going to have the money." Still later she again wrote the Solicitor-General informing him that after returning home from the Bureau of Justice "I met Mr. Miranda who was also accompanied by another man whose name is Perfecto Padilla, and they both insisted that I should withdraw the statement I made under oath before your honor and Mr. Cuyugan, and that if I should do so I would be well rewarded by their client Mr. Mariano Cu Unjieng."

Can anyone believe that these four affidavits were executed with any other purpose in view than "to poison the wells of truth"? At least let the experience of this and other courts be drawn upon for principles to guide us in such matters.

Where principal witnesses of the prosecution recant their testimony as perjured on motion duly presented after judgment of conviction has been entered, it is our duty to consider gravely whether their testimony at the trial was credible and whether the loss of their testimony will affect the result. But the mere fact that witnesses change their testimony after the trial is ended and conviction declared is of itself no ground for a new trial. In other words, the affidavits of witnesses for the prosecution that they had perjured themselves do not as a matter of law or right entitle the accused to a new trial.

Justice would not be served by an inflexible rule that a judgment of conviction must be set aside whenever a witness can be induced or for some reason desires to repudiate his sworn testimony. If that were so, right would be defeated in many cases. If that were so, the power to grant a new trial would rest not with the court but with the criminal and with easily persuaded witnesses who have testified against him upon the trial. In almost every instance it would be a facile matter for an influential party who has lost to obtain affidavits of perjury.

It is contended that three prosecution witnesses having repudiated their testimony, the basis of conviction was thereby destroyed and a new trial should be granted. The conclusion does not necessarily follow the premise. The untrustworthy character of recanting testimony is well known to those experienced in the trial of criminal cases. No form of proof is so unreliable. Only in extraordinary cases can a new trial be looked for on this account. It is the duty of a court to deny a new trial where it is satisfied that such testimony is not true, and particularly where it involves a confession of perjury. Never should a new trial be granted for perjured testimony if after eliminating it sufficient evidence exists to support the judgment. (See Underhill on Criminal Evidence, 4th ed., Ch., 52; *Lucia vs. State* [1905], 59 A., 1016 [Vermont]; *State vs. Adams* [1906], 60 S. E., 658 [South Carolina]; *State vs. Blanchard* [1902], 92 N. W., 504 [Minnesota]; *State vs. Morse* [1906], 86 P., 53 [Idaho]; *People vs. Tallmadge* [1896], 46 P., 282 [California]; *Commonwealth vs. Gwizdoski* [1933], 188 N. W., 383 [Massachusetts]; *State vs. Goodloe* [1933], 24 P. [2d], 28 [Oregon]; *State vs. Wynn* [1934], 34 P. [2d], 900 [Washington].)

The case of *People vs. Shilitano* ([1916], 218 N. Y., 161; 112 N. E., 733; L. R. A. [1916F], 1044), is mentioned in the prevailing opinion. I would here merely direct attention to the fact that it is a leading case on the subject. It appears that the defendant, had been convicted of the crime of murder in the first degree, and that thereafter three witnesses for the prosecution stated under oath that their testimony upon the trial was false. Nevertheless in opinions written by Mr. Justice Seabury, a renowned investigator of criminal violations and by Mr. Justice Cardozo, now a distinguished member of the United States Supreme Court, the judgment of conviction was sustained.

The New York Court of Appeals' ruling has been followed in other cases, notably by the Supreme Court of Illinois, also in a murder case, *People vs. Marquis* ([1931], 176 N. E., 314), and by the Supreme Court of New York in *People vs. Farini* ([1925], 209 N. Y. S., 532). In the latter case the accused was convicted of murder in the

first degree and his conviction was affirmed by the Court of Appeals. Thereafter a motion for a new trial on the ground of newly discovered evidence was offered. In denying the motion the presiding judge referred to the principles governing an application of this kind as stated in *People vs. Shilitano*, supra. Mr. Justice Carswell in concluding said:

"I have laboriously gone over the vast amount of material submitted. It leaves me with this impression, that the moving papers herein, viewed from the ordinary standards applicable to alleged newly discovered evidence, is a mass of typewritten trash. * * * The defendant was found guilty upon a trial where, in substance and in fact, everything urged upon this application was vigorously advanced on behalf of the defendant by competent counsel, and the jury has resolved the questions of fact on evidence that amply supports their conclusion. To grant a new trial in the face of this would be to make, under the forms of law, a hollow mockery of the administration of justice. So far as it is humanly possible to determine, the defendant has been properly convicted.

"This conclusion, having been arrived at, with every desire to accord the defendant all that he might properly have given to him under the law, requires that this motion be denied. I so decide without any misgivings."

Nor is the Philippines without a leading authority on the same subject. Emilio Valdez and Juan Gatmaitan were charged with the crime of murder. Each was convicted of the crime with which he was charged and Valdez was sentenced to death and Gatmaitan to life imprisonment. Both accused were defended in the Supreme Court as well as in the court below by counsel who on appeal the court referred to as "able and experienced." The judgment of the trial court as to Valdez was affirmed in the Supreme Court and as to Gatmaitan was modified by sentencing him to the death penalty. The motion for a new trial based on the retraction of a material witness of his testimony was denied, it appearing to the satisfaction of the court that his testimony at the trial was true and that the statements made in his affidavit retracting his testimony were false. (*U. S. vs. Valdez* [1915], 30 Phil., 293.) On a writ of error to the Supreme Court of the Philippine Islands, the United States Supreme Court affirmed the conviction and ruled that the testimony of a self-confessed, active, hired accomplice as a witness for the prosecution on a trial for homicide is not to be disregarded because, while first testifying to the guilt of defendant, he, by a subsequent statement, retracted the accusation, and later retracted the retraction, but his testimony is to be judged by confirming or opposing circumstances as well as by his character and the influences that invest him. (*Valdez vs. United States* [1917], 244 U. S., 432.)

One of my colleagues in his dissent states: "These motions for new trial have shaken considerably my conviction beyond a reasonable doubt of the appellant's guilt." Another of my colleagues in his dissent, states: "I understand that the evidence of record, after striking out the testimony of the witnesses for the prosecution, namely, Manuel Carlos, Perfecto Padilla, and Rafael Fernandez, would be incoherent, unintelligible, and insufficient, and would not tend to prove the guilt of the appellant beyond a reasonable doubt." With all due respect, I submit that with the opinions of two members of the Supreme Court in that sense, it would require a trial judge of more than ordinary fortitude to resist finding a reasonable doubt to exist. For all practical purposes, therefore, granting a new trial would be but another form of acquittal for the accused.

To the probable absolution of the accused above indicated or to the milder form of granting a new trial for cause, I am unalterably opposed. Mariano Cu Unjieng has had the benefit of skilled and resourceful counsel. Through their efforts his trial was prolonged for over two years. Thereupon he was found guilty beyond a reasonable doubt in a decision prepared by Judge Leonard S. Goddard, now an Associate Justice of the Supreme Court, which took into account it is true the testimony of recanting witnesses but mainly only to the extent of accepting it where other corroborative testimony existed which engendered a belief in their statements. The accused appealed and in extensive briefs and the usual oral argument his case was fully presented to us. Subsequently we unanimously found him guilty and have as unanimously denied a motion for reconsideration. And now all that would go for

naught because three witnesses have seen fit to recant.

It is an aphorism that before the law all men are equal. That indeed should be the aim of those entrusted with the administration of justice. The lowly accused in a remote barrio and the powerful criminal in the metropolis should stand at the bar of justice with equal rights and equal burdens. They are entitled exactly to the same extent to the protection of the law. But realistically speaking, do they receive equal consideration? The lowly accused is defended by an obscure attorney de oficio, the forms of law are gone through, and soon he is behind prison bars. The powerful criminal employs experienced counsel and his rights are tenaciously defended by them at every turn; found guilty in the trial court and in the Supreme Court, he need not despair, for witnesses for the prosecution can be found to declare their testimony false and to provide an easy avenue for escape.

The Portuguese have a proverb, "If a man steals much he becomes a baron; if he steals little he is a thief." Possibly all too true.

I have had no hesitation in deciding for myself what the action of the court should be. The affidavits intended to secure a new trial for the accused are not the result of a quickened love of truth. This notwithstanding that Rafael Fernandez, confessed and convicted swindler, has seen fit to retract only thereafter to retract the retraction; this notwithstanding that Manuel Carlos, self-confessed forger, alleges that his "conscience has become restless" and that "he cannot even sleep nor eat" on account of a realization "that I have become a tool of the bank and of a wicked man, Mr. Rafael Fernandez"; this notwithstanding that the witness Perfecto Padilla after waiting for three years now comes forward "to secure peace for my conscience and my soul"; and this notwithstanding Amalia Francisco's affidavit subsequently retracted and still later the retraction retracted. The alleged newly discovered evidence is really no more than after discovered evidence, is neither positive nor conclusive, and is of such a character as in no way to change the result. As all the other members of the court did when the case was under consideration on appeal, I satisfied myself of the guilt of the accused. Nothing has since transpired to shake that conviction. Consequently for the reasons expressed in this separate opinion, my vote is for denial of the motions for a new trial and for the taking of the necessary steps looking to prosecutions far perjury.

Hull, J., I concur.

DISSENTING

AVANCEÑA, C. J.:

I dissent.

We have sentenced the appellant to the penalty of 5 years and 6 months, as minimum, to 7 years, 6 months and 27 days, as maximum, for the complex crime of estafa committed through falsification of commercial documents. We have held that the appellant cooperated with Rafael Fernandez and Manuel Carlos in the falsification of these documents. The only direct evidence on the appellant's participation in the falsification of these documents, upon which we based our decision, is the testimony of said Rafael Fernandez and Manuel Carlos. These witnesses, according to the affidavits attached to the petition for the reopening of the trial, retracted from their testimony given at the trial and are ready to testify, if permitted to do so, that the appellant took no part in the falsification. I am not disposed to prejudge now whether the testimony of these witnesses has to deserve credit or not and, for this reason, I vote for the granting of the reopening of the trial prayed for and for permitting these witnesses to testify again in order to decide whether what they have declared or what they are to declare is the truth. I find no sufficient reason for closing the doors of repentance to these witnesses and denying them the opportunity which they ask to prevent the damage that may be caused by their testimony given at the trial, if they now act sincerely.

Inasmuch as the decision rendered in this case is not yet final, this petition for reopening is not untimely, and, besides, the testimony, which these witnesses offer to give, is clearly newly discovered evidence.

In denying the petition, the majority opinion states that, even if the testimony of Fernandez and Carlos were to be eliminated, there would still remain sufficient evidence establishing the guilt of the appellant. I do not find this reasoning sufficient. In the first place, the effect of the reopening is not solely to eliminate the testimony of these witnesses, for, it may also be to give them credit and, in the latter case, such result would affect the weight of such other evidence.

But that is not all. The other evidence referred to in the majority opinion, does not directly establish the appellant's cooperation in the falsification of said documents but simply that the appellant made use thereof for his own benefit and to the prejudice of a third person, knowing them to be forgeries. In such case, his act does not constitute the crime of falsification of commercial documents punished by article 301 of the old Penal Code, which we have applied, but that of the use of false documents punished in article 302 of the said Code. In such case, there is no complex crime, because the complex crime of estafa, and use of false documents does not exist (People vs. Reyes, 56 Phil., 286, and decision of the Supreme Court of Spain of April 10, 1889). And if this is the result, considering the testimony of Fernandez and Carlos eliminated, the penalty that should be imposed would not be so severe as that imposed by this court, and to deny the reopening of the trial applied for would be unjustified.

However, the majority argue that if it were considered established that the appellant made use of said documents for his own benefit and to the prejudice of a third person, knowing them to be false, this would give rise to a presumption sufficient to warrant his being found guilty of the crime of falsification. They cite a decision of the Supreme Court of Missouri wherein the doctrine has been laid down that one who is recently in possession of, and attempts to sell or obtain money on, a forged note, is presumed to have forged the same, in the same manner as one who is recently in possession of a stolen property without giving satisfactory explanation of his possession, is presumed to be the thief. This doctrine is not applicable to the present case. It refers to cases wherein it does not appear who the forger or the thief is. It is predicated upon the proposition that when a document has been forged necessarily someone had forged it and that when something has been stolen, necessarily someone had stolen it and, it not appearing who perpetrated the forgery and who committed the theft, the presumption in question arises in such cases. In the present case, it is known positively, because the fiscal so contends, the court below has so accepted, this court has so found in this instance, and it is not disputed by the defense, that it was Carlos who had forged these documents.

On the other hand, this court has not declared that it was the appellant who falsified the documents but that he simply cooperated in their falsification. Therefore, we do not have the case wherein that doctrine was laid down, for it was not necessary for someone to cooperate in the falsification in order that it could have been perpetrated and Carlos could have committed the forgery without the appellant's coSperation.

There is no necessary relation between the acts imputed to the appellant by the other evidence in the case and his cooperation in the falsification. The appellant could have made use of the false documents, even knowing them to be false, without having necessarily cooperated in any manner in their falsification.

It is insinuated that the present attitude of Fernandez in connection with the testimony which he offers to give may be inspired by some economic consideration. This is possible, and if it can be proven, it will be taken into consideration in appraising his credibility. But, on the other hand, there are other motives which counteract the influence of this consideration. Fernandez is serving an indeterminate sentence of imprisonment for many years and if he proves to be a perjurer, this circumstance will have an unfavorable influence in determining such

sentence. Furthermore, his recantation will bring about his prosecution for perjury and his sentence to another penalty of imprisonment.

And the fact that by their recantation, Fernandez and Carlos turned out to be perjurers, militates strongly in favor of the granting of the new trial. Assuming this to be true, their testimony has a polluted source. And if it is not shown that they committed perjury either in their recantation or in their testimony given during the trial, such circumstance necessarily, has to affect their credibility in both instances and, consequently, the merits of the case for the reason that their testimony is the only direct evidence on the responsibility of the appellant in connection with the falsification. But the new trial of the case will give the court an opportunity to discover whether they committed perjury in their recantation or in their previous testimony, and thus accept the one or the other for the final determination of the case.

DISSENTING

IMPERIAL, J.:

I entirely concur in the dissenting opinion of Mr. Chief Justice Avaneefia.

In the resolution of the majority it is stated that the second, third and fourth motions for new trial have been filed in violation of Rule 39 of the Rules of the Supreme Court and that, although section 42 of the Code of Criminal Procedure (General Orders No. 58) is also applicable, the granting of the new trial depends upon judicial discretion. I concur in the last proposition, but I dissent in so far as the violation of Rule 39 is concerned because I understand that this rule is not applicable. The rule reads:

"39. Applications for a rehearing or reconsideration shall be made ex parte on motion setting forth the grounds on which they are made, and filed within fifteen days after the promulgation of the decision of the court. No oral argument thereon shall be allowed. If rehearing is granted, the cause shall be reheard in conformity with the requirements for the first hearing. The mittimus shall be stayed during the pendency of a motion for a rehearing or reconsideration. More than one motion for a rehearing or reconsideration shall not be filed in any case without express leave of the court."

The above-quoted rule refers only to petitions for a new hearing (rehearing) and for reconsideration. It does not extend to motions for the reopening of the trial (new trial) which have for their purpose the reopening of the trial for the introduction of newly discovered and material evidence. For this reason, the second, third and fourth motions are not out of place and they can properly be considered in accordance with section 42 of General Orders No. 58.

I understand that, after striking out the testimony of witnesses Manuel Carlos, Perfecto Padilla and Rafael Fernandez for the prosecution, the evidence which would remain in the record would be incoherent, unintelligible and insufficient and would not tend to demonstrate the appellant's guilt beyond reasonable doubt. Because of this, I am of the opinion that something must be done in order

to appraise the veracity of the recantation of said three witnesses. This could only be done in a new trial wherein the three witnesses should be submitted to a rigid examination in connection with their material testimony constituting the complex crime of which the appellant has been found guilty. Taking into account the explanations and defenses interposed by the appellant during the trial, I am of the humble opinion, that it is premature to prejudge the veracity of the statements of the three witnesses contained in their affidavits upon which the motions for new trial are based. It is true that their veracity and spontaneity are suspicious because it is claimed that influences probably intervened in the recantations; but, suspicion however strong it may be, is not conclusive

evidence and should not serve as a gauge for determining the probatory value of the recantations in the present case. The only way to test the veracity of said recantations would be in a new trial which should be granted so that the parties may have another opportunity to examine the witnesses.

Having concurred in the dissenting opinion of Mr. Chief Justice Avancena, I abstain from making other comments with reference to the points of view already discussed in his dissenting opinion.

DISSENTING

BUTTE, J.:

I concur in the dissenting opinions of the Chief Justice and Justice Imperial.

In order to make out a case of guilt beyond a reasonable doubt against the appellant, this court to some extent, and the trial court still more, relied on the testimony of Fernandez, Carlos and Padilla, chief witnesses for the prosecution. In their affidavits attached to the appellant's motions for new trial, these witnesses not only retract as false and perjured the testimony they gave against the appellant but they also corroborate the testimony of the appellant tending to prove his innocence. These motions for new trial have shaken considerably my conviction beyond a reasonable doubt of the appellant's guilt.

It is undoubtedly the rule, as stated in the majority opinion, that the recanting testimony of a witness will not ordinarily be regarded as sufficient ground for a new trial except in extraordinary and unusual cases. (See 33 A. L. R., page 550, note.) But it is none the less true that in many cases, under the special circumstances recited therein, new trials have been granted where it is clear that if the perjured testimony be eliminated from the record, the evidence remaining might not be sufficient to establish the guilt of the defendant beyond a reasonable doubt. (U. S. vs. Dacir, 26 Phil., 503; Powell vs. Commonwealth of Virginia, 133 Va., 741; 112 S. E., 657; Pettine vs. New Mexico, 201 Fed., 489; Chappell vs. State, 6' Okla. Crim. Rep., 398; 119 Pac, 139; Barber vs. State, 87 Texas Crim. Rep., 585; 223 S. W., 457. See also cases cited in 33 A. L. R. pages 553, 554.)

In the case of United States vs. Dacir, supra, this court granted a new trial under the exceptional circumstances of that case because of the affidavits filed in support of the motion which were to the effect that one of the accomplices, as to whom the information was dismissed in order that he might be used as a witness for the prosecution, had admitted in a conversation after the trial that the appellants in that case had taken no part in the commission of the crime and that he and his fellow informers were the sole authors.

In the case before us it is not only one but three of the principal witnesses for the prosecution who have signed affidavits admitting the falsity of their testimony. One of them, Carlos, had been granted immunity from prosecution in order that he might testify against the appellant. It is true that Fernandez, the star witness of the prosecution, has attempted to retract his retraction but that is just another circumstance showing the type of man he is. If these witnesses had testified at the trial in accordance with the statements made in their affidavits before us, the contention of the defendant might logically have been sustained in the sense that the Cu Unjiengs were no less the victims of the unscrupulous frauds and forgeries of Carlos and Fernandez than were the banks.

I vote to grant a new trial in order that the whole truth may come out, rather than pronounce an irrevocable judgment upon such a record as we now have before us.

RESOLUTION ON MOTION FOR RECONSIDERATION

PER CURIAM:

The motion for reconsideration filed by the appellant does not raise any new question. It simply raises and discusses the same points which were already lengthily discussed in his brief and carefully considered by this court before rendering its decision. The only point which may perhaps, be considered as new by reason of the form in which it has been presented, is that based on what the appellant terms "liquidation of exchange of checks" between him and Rafael Fernandez and between the latter and G. A. Cu Unjieng, Cu Unjieng & Sons, and the Yek Tong Lin companies, which he has annexed to his motion by way of an appendix.

It is an error to believe that the decision is based principally on the testimony of Rafael Fernandez, Manuel Carlos and Perfecto Padilla. It is undoubtedly so because it was clearly stated in said decision that while it is true that the testimony of an accomplice should be admitted with extreme caution, in view of the polluted source thereof, it is also true that it should not be entirely rejected for such reason because there are occasions when some parts thereof should be accepted because they are worthy of credit. This happens, when said testimony, or parts thereof, are reasonably veracious and are supported by positive and satisfactory evidence. Rafael Fernandez and Manuel Carlos might have greatly exaggerated the facts, in order to appear less guilty than the appellant, which is not strange at all because it seems only very human to do so; but, for the reasons set forth in the decision, there is no way of evading the conclusion that the one who really falsified the warehouse receipts, certificates of stock, and contracts of sugar crop loans with which the appellant with the aid of Rafael Fernandez, was able to commit the crime of estafa against the Hongkong & Shanghai Banking Corporation, was Manuel Carlos, and he proved so during the trial, by imitating with amazing ability and ease the signatures of all the persons who, by reason of their position, intervened in the issuance of said kind of documents. Neither is there any way of evading the conclusion that the appellant, as attorney in fact of G. A. Cu Unjieng, received all the sums of money which, by means of such false documents, he succeeded in withdrawing from the entities and banks mentioned in the decision; nor is there any way of evading the conclusion that the appellant, in negotiating said documents falsified by Manuel Carlos, knew perfectly well that they were false, and this is the reason why, notwithstanding the fact that the periods for withdrawing the sugar to which the quedans referred had long expired, he did not withdraw it, and did not even try to recover from Rafael Fernandez the proceeds of the latter's promissory notes, supposedly secured by said warehouse receipts. The conclusion is likewise inevitable that the appellant had to resort to such means in order to provide himself with money, because his father, of whom he was the attorney in fact, had been deeply engrossed in the foreign exchange business and had furthermore become embarrassed by obligations from which both wanted to free themselves, Mariano Cu Unjieng not suspecting that his acts would be discovered, as in fact they were discovered much sooner than he expected. The false warehouse receipts Exhibits A, A-1 to A-63, of which more will be said later, came from the appellants; and when he went to open his father's account in the National City Bank of New York on November 19, 1930, he pledged the false warehouse receipts mentioned on page 11 of the decision. And to secure the loan which the appellant obtained from the Shanghai Commercial & Savings Bank, referred to on pages 21 to 24 of the decision, he pledged as security imaginary warehouse receipts of the Mabalacat Sugar Central, such as Exhibits ZZ-394-90 (warehouse receipt No. 138) and ZZ-394-91 (warehouse receipt No. 156).

The testimony of Perfecto Padilla agrees with that of Rafael Fernandez (t. s. n., pages 1149 and 1988) as regards the date on which the former received from the appellant warehouse receipts Exhibits A, A-1 to A-63 representing from 63 to 64 thousand piculs of sugar, which was on June 16, 1931, the same date on which said documents were brought to the Hongkong & Shanghai Banking Corporation and the first account of Rafael Fernandez was opened for him therein. The testimony of A. C. Hall does not detract from that of Padilla, because he himself (Hall), as he

stated, was not very certain of the date on which, according to him, he saw the said warehouse receipts; and that is why he confined himself to expressing his estimate saying that it was between the 10th and 14th of June, 1931. Neither is Padilla's testimony impugned by the fact that the cablegram, Exhibit 836, was sent on the 12th of said month and year, because it must not necessarily be inferred therefrom that Fernandez already had said warehouse receipts in his possession on said date. All the probabilities are that Mr. Hall, due to the time that had elapsed between said date and the date on which he testified in this case (four and a half months), failed to relate and mention the facts and dates coordinately; because it clearly appears from the testimony of J. T. Knowles, B. C. N. Johnston, and J. Walker, and from Exhibit R, that the warehouse receipts in question were brought to the bank on the said day, June 16th, and not before. The sending of the above-stated cablegram was not due to the fact that the Hongkong & Shanghai Banking Corporation had then opened to Rafael Fernandez a credit account, with which Smith, Bell & Co., Ltd., the sender, could consider itself sufficiently protected in the contract it had just entered into with said Fernandez of helping him sell in America, as intermediary, the sugar that he had garnered and proposed to garner, but it was rather due to the fact that said bank had given assurances of opening to the former (Rafael Fernandez) the credit account sought by him provided he put up the securities required of him consisting of warehouse receipts of centrifugal sugar. To the said entity (Smith, Bell & Co., Ltd.), this was sufficient guarantee that, in offering to sell in America the sugar of Fernandez mentioned in the cablegram in question, in accordance with the terms of their contract, it was not going into business the success of which was doubtful. The evidence shows that inasmuch as Fernandez put up the securities required of him only on June 16, 1931, it was also on said date that the Hongkong & Shanghai Banking Corporation opened to him the credit account referred to in the record as Account No. 1. This is undoubtedly all that happened; because, if Fernandez had the warehouse receipts referred to by said witnesses Padilla, Hall, Knowles and Walker, in his possession on June 12, 1931, the bank would have opened the said account for him on that same date, and not later. The fact that it was not opened for him on that date is evidence that Mr. Hall got mixed up in stating that Fernandez showed him the warehouse receipts Exhibits A-1 to A-60 before the sending of the cablegram Exhibit 836. Consequently, the testimony of Padilla is not lacking in value as corroborative evidence of that of Fernandez, and for that reason, it must be taken into consideration, as it was so in fact by the lower court as well as by this court.

The testimony of the said three witnesses, considered altogether with the other evidence mentioned in the decision and in the present resolution, is perfectly admissible for whatever veracity it has, being corroborated by the said evidence, and therefore it was correct not to reject them entirely.

The testimony of Manuel Carlos is attacked in many respects; one of them being the assertion by said witness that when he, went to ask the appellant, after the discovery of the fraud, what he should do under the circumstances, the latter simply told him: "After this matter has broken out, well, you take care of yourself." (t. s. n., page 5268.) It is argued that this is not only improbable but that it also constitutes evidence of the appellant's innocence, because, it is contended that it is unnatural for a man to turn away his copartner in a crime in the manner the appellant did to Manuel Carlos. If the other evidence of record, as well as other considerations were disregarded, such an argument would perhaps be good and forceful; but in the appellant's case it can not be so, because anybody who had proceeded with the same craft and sagacity, and with the same deliberation and foresight as he did, by preparing beforehand what he believed to be a good defense, causing Rafael Fernandez to appear more conspicuous than he in the transactions in which both of them were equally interested, in order to cover up his complicity thereby, and pretending to have received from said Fernandez as security of fictitious loans, some of which do not appear in writing, apparently valuable securities which in fact were worthless, as he himself knew, because they were fictitious and false, would undoubtedly have acted in the same manner. And it is not strange that he so acted then, because armed with the evidence prepared by him, which he believed was sufficient to justify his acts before the eyes of others, he considered it more prudent to disengage himself entirely from his

accomplices who were less cautious than he, in order to be consistent with his said evidence and give it more semblance of truth.

The other arguments of the appellant to destroy the testimony of Manuel Carlos, are of no importance. Rafael Fernandez did not contradict Manuel Carlos either directly or indirectly and the contradiction attributed to him in order to detract from the merits of his testimony which corroborates that of said Carlos, in reality does not exist. He did not say that he delivered the certificates of stock of his mother-in-law Sabina Sioco Viuda de Escaler to the appellant because he had no safe where to keep them. What he said was that, as he had absolute confidence in said appellant and not having safety deposit boxes in the People's Bank and Trust Company (t. s. n., page 2331), he considered it more prudent to deliver them to him so that he might keep them during his absence in Hongkong. The box referred to by him much later, saying that it was where his wife kept her income and savings, was not a safety box in the Peoples Bank and Trust Company, but that which they had in their house.

The contradiction of Manuel Carlos saying at first that he did not put the initials S. S. on Exhibit 588, and later on that he really put them there, has been satisfactorily explained. He said that he did" not remember such detail at the first time he was asked about it; but that he remembered it after reviewing the facts during the suspension of the trial, for which reason he immediately asked to be allowed to correct, as he in fact did correct, his testimony. This explanation is satisfactory; because, taking into consideration the fact that at that time it was already five days that he was being examined and cross-examined on facts and details difficult to enumerate, which occurred during the period from November, 1930 to July, 1932, it may be stated that it was due to fatigue, confusion and lack of time to remember the facts, rather than to malice or intent to falsify the truth, that he committed the said contradiction.

It should be reiterated on this occasion, as this court had already stated in its decision (page 21), that even disregarding the testimony of Manuel Carlos, there is evidence proving the guilt of the appellant, and said evidence is that stated in the decision. The lower court was exceedingly right in expressing itself in the following terms:

"Apart from the direct testimony of Carlos and Fernandez upon the question of that participation, the court had no difficulty in finding that he was and must have been a participant in that fraud, because of the use of so much of the proceeds thereof in taking care of his father's No. 2 account in the National City Bank. As is said in the memorandum for the prosecution, in the absence of a criminal combination or conspiracy, one does not commit such a fraud as was committed by Fernandez on the Hongkong Bank for the benefit of another. The surreptitious payments by Fernandez at the instance of the defendant from the proceeds of the fraud upon the Hongkong Bank into the No. 2 account in the National City Bank, which was overdue and which had been secured by the forged quedans pledged by the defendant there, prove beyond any reasonable doubt whatever, apart from the other evidence in the record, that the defendant was an accomplice of Fernandez in the fraud upon the Hongkong Bank." (Page 142, printed decision.)

It is contended by the defense that there was. an error in the conclusion that the appellant was aware that the warehouse receipts pledged by him to the National City Bank of New York to secure the overdraft of his father G. A. Cu Unjieng, were false. The reasons alleged in support of its contention are not convincing, because the evidence shows that the appellant knew that the warehouse receipts of the Pampanga Sugar Development Co., Inc. pledged by him to the Bank to secure his father's overdraft of P22,700, were false; and he was aware of this fact when he accepted said warehouse receipts from Bafael Fernandez as part of the security which the latter gave him for the payment of his alleged obligation of P250,000 stated in the promissory note Exhibit 586, of January 26, 1931. Under these circumstances he could not, nor can he now, allege good faith or ignorance of that fact, particularly if it is considered that his act of pledging them took place exactly one day after he received them, that is on January 27, 1931 (Exhibit II).

The fact that in Exhibit 586-C which, according to the defense, constitutes the third group of warehouse receipts which Rafael Fernandez secured his said promissory note Exhibit 586 and is the same group with which the appellant, in turn, secured his father's said overdraft of P22,700, there was included warehouse receipt No. 315 for 520.869 piculs of sugar of the Mabalacat Sugar Central, which was genuine, does not argue in his favor. He withdrew said warehouse receipt later leaving the false ones in the bank, because his understanding with Mr. Shaw was that he would pledge to him only warehouse receipts of the Pampanga Sugar Development Company, Inc. Upon wishing to withdraw also the false ones after the discovery of the fraud, he then found out that it was already too late, because they had been turned over to the City Fiscal's office for the corresponding action, which news caused him much alarm and anxiety. All these, and the reasons given on pages 34, 35, 36 and 37 of the decision, show that the said contention of the defense is absolutely unfounded.

It may be added to the foregoing that if said warehouse receipt No. 315, for 520.869 piculs of sugar of the Mabalacat Sugar Central, belonged to the said central, having been sold to it by the former holder thereof Teodoro Santos (Exhibits ZZ-399-5 and ZZ-405-14), since it does not appear that it was sold to Rafael Fernandez, the appellant should not have accepted it as part of the security from said Fernandez, because it did not belong to him; nor was Fernandez permitted to encumber it in any manner without the permission of the court, because he then had it only as a receiver. If the appellant accepted it, in spite of all the foregoing it is because he knew that everything was fictitious. He cannot allege that he was not aware of said circumstance, because the Mabalacat Sugar Central practically belonged to his father and to him, as his father's attorney in fact, and because precisely it was due to his efforts that Rafael Fernandez was appointed receiver.

If it were to be assumed for a moment that it was Rafael Fernandez who acquired the warehouse receipt in question (Exhibit ZZ-399-5) from its original owner Teodoro Santos, in his private capacity and not as a receiver, then one thing readily becomes apparent: that the value of said warehouse receipt or any part thereof, has not been credited to him. It should be noted that said Exhibit ZZ-399-5 shows upon its face that when Fernandez received it from its holder, he was already receiver of the Mabalacat Sugar Central, so much so that he countersigned it as such receiver.

And it may also be added to all the foregoing considerations that when the appellant negotiated with Mr. Shaw of the National City Bank of New York for the opening in said bank of a credit account for his father, he assured that he would secure the payment of said credit only with warehouse receipts of the Pampanga Sugar Development Co., Inc., representing sugar already sold and ready for delivery in May, 1931; and that when Mr. Shaw asked him to show the contracts whereby, according to him, Fernandez gave him the warehouse receipts which he was going to pledge to the said bank he excused himself saying that he could not do so as it involved something confidential. These are circumstances and reasons necessarily making it understood that the defendant was not unaware of the nature of those warehouse receipts or of the flaw thereof, and that he in fact conspired with said Rafael Fernandez and Manuel Carlos to falsify them, because, otherwise, he would not have confined himself to pledging only warehouse receipts of the Pampanga Sugar Development Co., Inc., nor refused to show to Mr. Shaw his alleged contracts with Fernandez. Neither would he have been as he did with the China Banking Corporation where his father was a director, not pledging to this bank any of said receipts.

It must be borne in mind, as an additional reason, that on May 27, 1931, according to the evidence, the appellant was informed by Rafael Fernandez that the falsity of the warehouse receipts and documents which the latter had pledged to the Peoples Bank and Trust Co. had been discovered. The appellant had just then also found out that said Fernandez did not have any funds in said bank, because the check Exhibit TT-21 for P75,000 which Fernandez had issued to him in payment of an alleged obligation was returned to him dishonored for lack of funds of the drawer. Notwithstanding all this, the appellant, as his father's attorney in fact gave Fernandez the sum of

P350,000, accepting false warehouse receipts as security, in order to be able to withdraw the false documents from the bank. Furthermore the appellant retained in his possession the warehouse receipts which he had received from Rafael Fernandez allegedly as security, and he did not take any step to withdraw the sugar represented by them, notwithstanding the fact that he knew, as he told Mr. Shaw, that said sugar was already sold and could be withdrawn from the warehouses of the Pampanga Sugar Development Co., Inc. in May, 1931. Moreover he loaned Fernandez P30,000 without any security whatever. These facts justify all the more the conclusion that the appellant really conspired with Rafael Fernandez and Manuel Carlos to commit the falsification and estafa under consideration.

The defense again disputes the probative value of the thirteen pairs of checks known in the record as Exhibits YY-67, YY-68, 1114, 1115, 1485, 1486, 105, 106, 147, 148, 149, 150, 124, 125, 173, 174, 190, 191, 204, 205, 2234, 2235, 2236, 2237, 2242 and 2243, and mentioned on page 16 of the decision, claiming that they do not prove distribution of profits between the Cu Unjiengs, father and son, and Rafael Fernandez, in their sugar business but, at the most the payment of commissions to the Cu Unjiengs by Fernandez. The reasons adduced by the defense are neither new nor convincing. Neither do they raise any doubt whatever which might be favorable to the appellant.

It is an error to believe that the sums expressed in said checks are all the profits obtained by the three from their sugar business. Nothing of this was said in the decision. It is likewise an error to believe that the three have not been losing in said business. What said checks prove is, that they gained in some sugar transactions made by them; that they agreed to distribute among themselves the profits realized from said isolated transactions in the manner expressed in said checks, and that among the three there really was a contract to engage, and in fact they did engage, in said business.

It can not be said that the payments made by means of said checks are for commissions, because under the terms of the contract entered into between Gu Unjieng e Hijos and Rafael Fernandez on April 13, 1928, Exhibit 505, the former was entitled to the payment of commissions only after having sold the sugar of the latter, and it does not appear that any sale has been made by them. Furthermore, the appellant could not show any relation between the payments made by means of said thirteen pairs of checks and any delivery of any sum of money by him or his father, if it is true that part of said payments constitute payments of interests and part payments of commissions. Neither could he explain at what rate of interest or commission such payments were made.

The appellant's testimony appearing on pages 19112 to 19135 of the transcript of stenographic notes, which are not inserted herein for brevity's sake, more than anything else show, on account of its inconsistency and lack of corroboration, that there, were no such things as interest or commissions; and this is all the more clear because although the appellant had assured that he entered all of said interest and commissions in his income tax returns, it was found out that none of it was entered at all. He certainly wished to excuse himself afterwards, by saying that he did not state said interest and commissions in his returns because he was afraid that he might be prosecuted for usury, but this excuse does not strengthen his testimony regarding said interest and commissions; in any event, it proves his want of scruples which renders him less worthy of credit, especially when the other facts mentioned on page 59 of the decision are taken into consideration.

The arguments of the defense in support of its propositions appearing on pages 26, 28 and 44 of his motion are not sufficient to warrant a reconsideration of this court's findings stated therein. The reasons set forth on pages 21, 22 and 23 of the decision are enough to show how well founded the findings referred to in the first proposition are. It must be borne in mind that the court has not considered it established that Exhibits 581, 582, 583, 584, 586, 1374, 1375, 1376, etc., are evidence of loans made by the Cu Unjiengs to Fernandez. This is what the appellant attempted to prove but in view of the evidence presented by the prosecution, this court resolved otherwise,

declaring that said promissory notes are mere fictitious loans which really have never been made. The court had to declare them so, because if said documents were what the defense claims them to be, the Cu Unjiengs would have demanded securities, and would have required, besides a detailed statement of such securities in said documents, and the delivery thereof to them; but it appears that they did not do so except in the case of Exhibit 587. On the other hand, the evidence shows that notwithstanding the appellant's claim that G. A. Cu Unjieng had a big credit against Fernandez and that the latter was heavily indebted, the appellant, as G. A. Cu Unjieng's attorney in fact, did not demand payment thereof from him. He did not even attempt to sell or dispose of some of the warehouse receipts which had been given to him as security for payment, nor try to foreclose the mortgages constituted by said Fernandez in favor of his father.

The excuse that Fernandez had a deposit of P200,000 in the possession of the Cu Unjiengs, citing Exhibit 590 for said purpose, is unfounded, because the contrary is precisely what appears in' said document. As stated by him therein, he was already indebted to G. A. Cu Unjieng in the sum of 1*439,789.35.

The reasons given on pages 21, 22, and 23 of the decision are enough to refute the arguments of the defense in support of its second proposition. Likewise the reasons set forth on pages 27, 28, and 29 of said decision are enough to destroy the arguments advanced in support of its third proposition. The amount involved was not an insignificant one but P75,000. The appellant, upon discovering that Rafael Fernandez did not have said amount when he drew the check Exhibit TT-21 against the Peoples Bank and Trust Co., far from giving him P350,000 in his father's name (Exhibits 96, 460 and 576), should have refused to do so, as any other man acting in good faith would have done; or at least, he would have deducted said sum of P75,000 from the P350,000, so that his risk or losses would be minimized. The fact that he did not do so, further justifies the conclusion that he was aware of the falsity of the documents which he pledged to the banks, at the time of pledging them. The incident between Tiaoqui and Fernandez referred to by the defense does not affect the question because Tiaoqui did not lend any more money to Fernandez. He merely returned the latter's check when he was asked not to deposit it at that moment. However, when he was given another check some days later, he succeeded in cashing without any difficulty (t. s. n., pages 1814 and 1815).

These considerations, added to those stated in the decision (page 59), regarding the appellant's conduct in civil case No. 39570 of the Court of First Instance of Manila, entitled Manila Export Co. vs. Mariano Cu Unjieng, presenting promissory notes which he knew were false, in support of fictitious counterclaims, constitute good and powerful reasons to maintain the findings of this court questioned by the defense.

The propositions of the defense discussed in the chapter which begins on page 37 of his printed motion, are based on false premises. G. A. Cu Unjieng had in fact in the Peoples Bank an overdraft entirely different from that of P150,000 which was liquidated in March 1931 (Exhibit XX-2). It was the overdraft in the name of Rafael Fernandez, but which really belonged to him. This is evidenced by the fact that when the fraud was discovered on May 27, 1931, he gave to Fernandez, through the appellant who was his attorney in fact, the P350,000 referred to in Exhibits 96, 460 and 576, all of which bear the same date, May 27, 1931, to enable Fernandez to fix the discovered anomaly. The evidence shows that Fernandez did so in fact, paying the overdrafts obtained from the Peoples Bank and Trust Co. with part of said sum of P350,000. In connection with this point, read pages 37 to 40 of the decision in order to have an idea of how all the incidents relative to said sum occurred.

The transfers executed by Fernandez in favor of the Cu Unjiengs after the discovery on July 7, 1931, of the fraud committed against the National City Bank of New York do not have the character attributed to them by the defense and cannot be compared to the assignment of rights made by Fernandez in favor of the Peoples Bank and Trust Company and the National City Bank of New York, because in the case of these two banks, there was lawful consideration, while in the case of the Cu Unjiengs, there was absolutely none, because everything was

fictitious, Fernandez having been moved by his desire to save some of his properties, and the appellant by the desire to help the latter and at the same time to prepare his defense, and to keep for himself the properties of said Fernandez if it comes to the worst. This is confirmed by Exhibit 508 in which Cu Unjieng appears in the Insolvency of Fernandez, as a creditor for the big amount of P1,500,000, according to Fernandez.

That there was no lawful consideration in the deeds of transfer executed by Fernandez in favor of the Cu Xnjiengs, unlike the assignments of rights made by him in favor of the said two banks, is shown by the fact that some of the printed promissory notes signed by said Fernandez in order to simulate the execution of said deeds of transfer and release of liens were antedated, and others signed in blank, the blanks to be filled not having been filled until later. It is not amiss to invite attention at this point to what this court said on pages 26, 32, 33, 45 and 48 of the decision, to complete the reasons showing that the proposition of the defense is unfounded.

The telegram, Exhibit 1046, relied upon by the defense is of no value. Nor does it warrant the inference that the said transfers were made for a lawful consideration. It is worthy to note what Fernandez said on pages 6888 and 6889 of the transcript of stenographic notes.

The reasons invoked in support of the proposition discussed by the defense in the chapter which begins on page 48 and ends on page 53 of his printed motion can not stand a slight analysis; the smack more of subtlety than anything else. It is because the defense begins by assuming that this court, in expressing itself in the terms appearing on pages 29, 30, 31, and 32 of the decision, took for granted that Fernandez had pledged to the Cu Unjiengs the warehouse receipts referred to therein; and by assuming that such pledges really took place. But, neither one nor the other is true; all were simulations of promissory notes and of warehouse receipts of the Pampanga Sugar Development Co., Inc. The reasons set forth by the defense are rebutted by the considerations and the facts stated on pages 35 and 36 of the decision. On the other hand, it is not stated in said decision which, by the way, grants as a mere hypothesis, only for the purpose of following the theory of the defense, that Fernandez had pledged several warehouse receipts in good faith to the Cu Unjiengs, that upon giving him the warehouse receipts which they might have withdrawn from the National City Bank of New York, he would have kept them for his exclusive benefit. What is stated in the decision or, at least, the only thing logically inferable from its terms is, that had said warehouse receipts been withdrawn from said bank and had they been placed in the hands of Fernandez, the latter would have been able to withdraw the sugar represented by them and he and the Cu Unjiengs would have been able to sell it afterwards, the Cu Unjiengs receiving the proceeds thereof.

Perhaps it would have been better for his cause if the appellant did not receive the payments made by Fernandez by means of checks, because it would have better concealed his complicity; but if he did so, it was perhaps due to carelessness, or to the idea which he and Fernandez shared, that the discovery of their act would not come so soon. Besides, did he expect Fernandez to betray him, or, the promissory notes, which he required Fernandez to make in his favor to shield himself if necessary, to be insufficient? Did he know, or could he have even so much as conjectured that upon the discovery of the fraud of Fernandez in the bank, Fernandez would not say that he in fact owed much money to him and to his father? Were they not very intimate friends, "compadres", and almost brothers? Perhaps the appellant preferred the payments to be so made in order to give more semblance of truth to the fictitious transactions between him and Fernandez. On the other hand, is it not due to the more or less imprudent acts of a criminal, a carelessness on his part, or an overconfidence in the effectiveness of his plan, that he is sooner or later brought to the courts? To discover the conspiracy and connivance among the appellant, Rafael Fernandez, Manuel Carlos and the others who helped them, it was necessary to ransack everything, and the record of this case which is voluminous, speaks for itself of the efforts exerted in order to discover that the appellant is not, as he pretends to be, a victim of Fernandez.

The premise upon which the defense bases its proposition that the Cu Unjiengs were creditors of Fernandez for

having granted him several loans, is false. It has already been stated in the decision and also in preceding paragraphs of this resolution, that the alleged loans of the Cu Unjiengs to Fernandez are fictitious and in order not to repeat the same reasons and again enumerate the evidence, it is sufficient to mention the fact that the P350,000 expressed in Exhibits W-33, W-21 and W-6 which went into the coffers of the National City Bank of New York, to pay Guillermo A. Cu Unjieng's account No. 2 in connection with which the appellant as attorney-in-fact of said Guillermo A. Cu Unjieng, pledged false warehouse receipts, do not represent any payment of any loan made by the Cu Unjiengs to Fernandez.

The defense claims that the appellant's anxiety observed by Mr. Shaw when the latter informed him that the warehouse receipts pledged by him had been turned over to the fiscal is not a sign of guilt. Why should it not be so when said warehouse receipts according to said appellant, did not belong to him nor to his father, but to Fernandez, and that he and his said father were only indorsees? That they were indorsees is the most favorable assumption that may be granted to them, because in reality the indorsements of said warehouse receipts were in blank, and only some of them were indorsed in said form by Fernandez. What was there for the appellant to show alarm and anxiety, if he had the excuse that they had been pledged to him by Fernandez? Why his insistence to withdraw them from the National City Bank of New York? And why did not he himself in person want to do so openly at first, without resorting to Fernandez, since it was he as his father's attorney in fact and nobody else who had pledged them? And why did he not upbraid Fernandez, as soon as he found out from the revelation of Mr. Shaw that all the warehouse receipts pledged by him to the National City Bank of New York, which he claims to have also been pledged to him by Fernandez as security for alleged promissory notes were false? Can his alleged innocence be reconciled, first, with his apparent calmness; second, his affability to Fernandez; third, his passivity in the presence of Mr. Shaw, without being ruffled, notwithstanding the fact that Fernandez who gave him the false warehouse receipts, was before him; and later his secret conference of almost two long hours with said Fernandez in the same offices of Mr. Shaw, so as not to repeat the other reasons already stated in the decision, from which no other thing may be inferred than the appellant's previous knowledge of the falsifications and frauds? Are his anxiety and alarm, which he could not repress upon receiving the news that the false warehouse receipts which he wanted to withdraw had already been turned over to the City Fiscal's office, compatible with his innocence? It should be noted that this last incident was much later than the discovery by Mr. Shaw of the fraud committed against his bank. If all these considerations and the facts in support thereof are taken into account in connection with the rules regarding conspiracy mentioned on page 73 of the decision, there would be no room for doubt that the appellant as co-conspirator of Rafael Fernandez and Manuel Carlos, should answer as co-author for the complex crime of falsification and estafa of which he was convicted. Therefore, there was no error in the interpretation of the attitude, conduct and steps taken by the appellant, which were construed as signs and evidence of guilt.

The argument of the defense that between the testimony of the appellant and that of Mr. Shaw of the National City Bank of New York, relative to the ownership of the warehouse receipts with which the appellant secured the payment of his father's Account No. 2, that of the former should be given preference because said warehouse receipts belonged to Rafael Fernandez for the reason that they were in his name, is of neither weight nor value, in view of the reasons and considerations stated in the decision (pages 59, 35 and 36). The fact that said warehouse receipts were in the name of Fernandez does not necessarily prove that, after they had been indorsed by him to G. A. Cu Unjiengs, they continued to belong to him. On the contrary, the indorsement thereof made G. A. Cu Unjieng their owner. This is the same ruling upheld by this Court in the case of *Siy Cong Bieng & Co. vs. Hongkong & Shanghai Banking Corporation* (56 Phil., 598).

The argument with which the defense tries to explain why the Cu Unjiengs did not require any securities from Fernandez for the loan of P30,000 which they granted him on July 6, 1931, Exhibit 97, is without merit. It claims

that all this is due to the fact that said sum was relatively small and, furthermore, it was covered by the deposit of P200,000 which Fernandez had in the possession of the Cu Unjiengs. There is certainly nothing in the record to prove satisfactorily that said deposit has ever really existed, unless we accept the theory of the prosecution that in the sugar business in which the Cu Unjiengs and Fernandez had been engaged, the former contributed the capital and the latter his industry, jointly with the appellant. It is not characteristic of businessmen of the cleverness and experience of the appellant, to loan money without any security whatsoever to persons who are known to them to issue checks against a bank without having funds therein, particularly when said persons are already behind in the payment of their other obligations for a greater amount, contracted much prior thereto, and above all, if it is likewise known to them that such persons have been committing frauds against a bank. According to the Cu Unjiengs, before Fernandez was discovered issuing the check Exhibit TT-21 for P75,000 without funds and also before granting him the said loan of P30,000, he owed them the sum of P50,000 (pages 42 and 43 of the decision), without any security, and furthermore, the appellant was already informed that said Fernandez had committed frauds against the Peoples Bank & Trust Co. (t. s. n., pages 6874, 6875; page 25 of the decision.)

As the propositions contained in the printed motion, pages 67 to 82, are not new, and the[^] reasons and considerations set forth in the decision are sufficient to destroy them, they do not deserve further discussion. Proceeding now to the discussion of the point regarding the so-called exchange of checks between the appellant and Rafael Fernandez, and between the latter and G. A. Cu Unjieng, Cu Unjieng & Sons and the Yek Tong Lin companies, the following considerations ought to be made:

It appears from the record that some of the shares of stock and properties related to the items stated on page 136 of the decision of the lower court have passed from Rafael Fernandez to the appellant, and others from said Fernandez to the Cu Unjiengs, father and son. Said items are as follows:

"Warner Bros. & Fox Film

P5,850.00

"The P13,300 transaction

6,650.00

"Eastern Motor & Iron Works

75,609.44

"Micpi—Shares

130,000.00

"Micpi—Land

40,492.16

"C. & F. Investment Co.

254,063.69

"Bataan Sugar Central

133,000.00

"Central Azucarera de Ilocos

63,693.00

"Eastern Theatrical Enterprises, (about)

55,000.00

"Excess of cash delivered by Fernandez to defendant from November 1, 1929

60,666.14

P825,024.52"

As may be seen, the entire proceeds of said shares of stock and properties amount to P825,024.52. This amount does not appear credited to Fernandez in the exchange of checks referred to in the motion for reconsideration.

To the above-stated sum, there should also be added that of P4,516.90, representing the value of the sugar referred to in the warehouse receipt Exhibit ZZ-399-5 mentioned on page 11 of this resolution, which amounts to 520.869 piculs, computed at the rate of T9 per picul, upon the basis of the stipulations made between the Cu Unjiengs and Fernandez in Exhibit 505, on April 13, 1928, after deducting the charges and liens to which said article was subject, which liens, according; to said document, amounted to P170.92.

And the liquidation of the alleged exchange of checks presented by the defense can not be considered unquestionably correct, because the appellant himself, testifying at the trial, could not help but admit that Exhibits 709 and 709-A, which complement each other, do not include all the checks issued by Fernandez in favor of the Yek Tong Lin companies. The pertinent part of the appellant's testimony is as follows:

"Q. So that Exhibit 709 is not complete in so far as the checks issued by Rafael Fernandez in favor of either of those two companies are concerned?—A. Yes, sir.

"Q. You mean that it is not complete?—A. It is not complete." (t. s. n., pages 17274 and 17275.)

In fact, said liquidation is neither correct nor complete, because it does not contain nor include all the payments made by Fernandez to the Cu Unjiengs. Several checks of the latter, which the Cu Unjiengs received and cashed do not appear therein. They are as follows:

Exhibit YY-2466, dated January 30, 1931, Exhibit YY-2384-Y, dated October 31, 1930, Exhibit YY-2551, dated February 20, 1931, Exhibit YY-4392, dated February .19, 1930, Exhibit 141, dated July 15, 1930, Exhibit 148, dated July 16, 1930, Exhibit X51, dated July 18, 1930, Exhibit 172, dated April 15, 1931.

Furthermore, it charges an account twice against Fernandez as that stated in Exhibit YY-4668 (pages 101 and 106 of the printed motion for reconsideration).

But even disregarding the fact that said liquidation is incorrect, being incomplete and inaccurate, it appears from the same summary made by the defense that the apparent balance of P1,004,203.75 claimed to be against Fernandez, is only P174,662.33 because, following the theory of the said defense, he must justly be credited the items enumerated on page 136 of the decision of the lower court, plus the proceeds of the warehouse receipt Exhibit ZZ-399-5 making a total of P829,541.42. If the P200,000 alleged by the defense itself, on page 28 of its printed motion for reconsideration, to have been deposited by Fernandez with the Cu Unjiengs, were added to said amount and since the liquidation in question, as stated on page 94 of the motion, comprises the period from November 1, 1929 to July 8, 1931 there were also added thereto the price of the properties transferred to them, directly and indirectly, by Fernandez, inasmuch as he received nothing from them for said transfers (pages 26, 27, 32 and 33 of the decision), the result would be that the Cu Unjiengs are the ones indebted to Fernandez for thousands of pesos, and not the latter to the former.

For all the foregoing, and by virtue of the other considerations set forth in the decision, this court is of the opinion and so holds that the motion for reconsideration is without merit and, therefore, resolves to deny it in all its parts. So ordered.

Avanceña, C. J., Malcolm, Villa-Real, Hull, Butte, and Diaz, JJ.

CONCURRING

IMPERIAL, J.:

In voting in favor of the granting of the motions for the reopening of the trial presented by the accused-appellant, I expressed the opinion that, if the testimony of the witnesses Rafael Fernandez, Manuel Carlos and Perfecto Padilla for the prosecution were discarded, the other evidence remaining in the record would be incoherent, incomprehensible and insufficient to sustain the guilt of the appellant beyond reasonable doubt; however, as said motions have been denied for lack of the necessary number of votes, and the testimony of the said three witnesses stand as formerly, I understand that the motion for recon, sideration is without merit, and for this reason I vote with the majority.

Motions for new trial and reconsideration denied.

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