association. Also involved are questions of forced labor, refugees and stateless persons.

The history of the declaration of human rights demonstrates to us a most striking fact. It is that the struggle for human rights has not been an easy one. The largest problem that has arisen in the tendency of the nations to be extremely concerned of their own national self-interests and to be very quick at seeing the probable dangers that their commitments to a collective action on human rights might affect them in their own national and domestic relations. This is why up to now there has not yet been successfully concluded a covenant on human rights. Also, we must contend with certain political systems that obtain in some of the nations of the world today which serve to obstruct, even deny the recognition and protection of human rights. It is in countries that adhere to democratic traditions where advancement in human rights have been furthest achieved. Therefore, it is of primary importance, especially to those of the teaching profession, to continue to bring greater perception in the inculcation of the principles of individual freedoms to our people, young and old. For only through such perseverance borne of conviction would our efforts really bear fruit. We in this country are quite fortunate in that we belong to the democratic group of states. Jointly and collectively with our other sister nations of the World, we should be able to achieve for our peoples that ever greater measure of freedom for the individual. To be able to do so, for all peoples, would be in essence to achieve the goals of the United Nations.

SUGGESTED AMENDMENTS TO THE PROPOSED REVISED RULES OF COURT*

(Second Installment)

By Manuel V. Moran **

RULE 44

Rule 44, Section 7. — According to this section, the estimate of the expense is for the printing of 40 copies of the record on appeal. It should be for the printing of 60 copies of such record according to section 9.

Rule 44, Section 12. — According to this section the appellant shall receive five copies of the printed record on appeal. It must be fifteen copies according to the preceding section 11.

RULE 46

Rule 46, Sections 1 and 2 together with Rule 54, Sections 7 and 8. — By the amendments contained in these provisions, oral argument is practically eliminated in appealed cases. Even in cases involving the security of the State, or the life of the accused as in capital cases, the parties are not entitled as of right to appear before the Court personally or thru counsel to argue their cases. They can do so only by special permission of the Court which may be granted only in two instances which in effect are either useless or unnecessary as will be shown later.

It is true that under the present practice, oral argument is often a waste of time, it being merely a repetition of the arguments already stated in the briefs. In this jurisdiction, a brief is not brief but an exhaustive written speech, not merely an outline of grounds and authorities as it is in England. In that country, it is in the oral argument where attorneys elaborate extensively on their outline of grounds and authorities and where the Justices examine and study

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** A.B., LL.B., L.C.M., D.C.L., Former Chief Justice of the Supreme and Former Ambassador to Spain and the Vatican.

thoroughly the arguments of counsel with a view to shaping if possible their own judgment. This kind of oral argument would be vicious in the Philippines where the briefs are generally more than a complete exposition of all imaginable theories in support of each side of the case.

Upon the other hand, there can be no doubt that an oral argument has a virtue that cannot be overlooked. A spoken word is generally more effective than a written one. The voice and presence of the speaker impress life on his words, thus awakening the listener from inattention or mental inaction, while the written word is cold and passive and can be grasped only by an active and concentrated mind. When a Justice is reading a written argument and his mind is still under the impulse of problems in other cases, his attention may not have the sufficient fixity to grasp all the angles and details. It is like a solar glass which cannot burn completely the paper underneath if it is kept moving. This is not the general rule of course, but it is a real danger considering the excessive amount of work crowding the minds of the justices. And anything that may aid in minimizing this danger should not be taken lightly. Arguments spoken orally in an environment of solemnity before the Court duly convened may help to stimulate more concentration of attention and to stir warmer reactions in the members of the Court. Then there is the questioning (which cannot be made in written argument) by the Court to counsel as to statements or arguments made in the briefs which may not be so satisfying and call for clarification or further elaboration, and the elaboration, and the exchange of views, which in that wise, may follow between Court and counsel in an atmosphere of cordiality and mutual respect, is productive of enlightment the value of which cannot be underestimated. It is my experience in more than one case that, after reading the briefs and after forming my own opinion, I changed that opinion upon hearing the oral argument wherein arguments adduced in the briefs were reiterated in different forms and with emphasis, and were supported by details not clearly touched in the briefs but came into light prominently from impromptu answers given by counsel to questions propounded by other Justices, and which changed entirely the picture of the case. Other Justices had the same experience as I was told by them.

The fundamental requirement is that there should be hearing in Court. **Hearing** implies something to be heard, not to be read. In appellate courts, hearing has no other meaning but oral argument. Of course, the parties may also be heard in writing, which is a substantial compliance with the requirement; but this should be at the option of the parties. In other words, parties are entitled to appear

before the Court personally or thru Counsel to argue their cases, unless they prefer to present their argument in writing. This is the democratic feature of our appellate procedure. And this is the reason why in England the oral argument is the central life of appellate procedure, the briefs merely supplying an outline of the matters to be elaborated therein. The outline is required to be brief and it is thus called brief, but the oral argument may be as extensive as the interest of justice may require, within a maximum period of time fixed by regulations, extendible in the discretion of the Court. Perhaps this may be the remedy to the evil which the Court seeks to overcome.

But as stated above, the proposed amendment establishes the drastic principle that oral argument is prohibited except upon special permission of the Court. This permission may be granted only in two instances, namely (1) when any party for special reasons asks for oral argument; and (2) when the Court on its own motion requires oral argument. These two exceptions, as above stated, are either useless or unnecessary.

Under the first exception, the party has to file a motion stating his special reasons for oral argument. This requirement is a burden placed upon the party intended to discourage the oral argument. What the special reasons for oral argument are, the party may not know for there is no indication of what they might be. But supposing that one special reason is that the party's brief failed to state substantial arguments which he may develop in an oral argument, then he must state what those substantial arguments are. The motion must be filed prior to the preparation of the calendar under Rule 3 of this Rule 46. At that stage of the proceedings the Justices have not yet read the briefs and are unaware of the merits of the case, hence they are not yet in a position to decide whether the supposed additional arguments are really new and substantial. Furthermore, since the additional arguments are stated in the motion, the Court may order them noted and thus declare the oral argument unnecessary.

As to the second exception, it is unnecessary to mention it as such for it is within the inherent powers of the court and it has been exercised very seldom, if ever, except when there is a failure to reach a majority in the Court, a circumstance that it is specially provided for.

From the foregoing considerations, I believe that the suppression of oral argument does not seem to be sound. It is undemocratic, to say the least. As it is now, only in original cases, which are negligible in number, and which, in general, are not so important,

may the parties appear before the highest court to argue their cases, whereas in appealed cases or cases for review constituting the bulk of the Court's work, the decision of which being the essential function of the Supreme Court as a Constitutional Body, the parties cannot appear before the Court regardless of how important the issues involved might be.

With all due respects, I suggest that Sections 1 and 2 of Rule 46, Sections 7 and 8 of Rule 54 be left unamended. And if the purpose is to avoid duplication of work and waste of time in oral argument, Section 4 of the same Rule 46 may be amended by adding thereto at the end the following: "No party shall be allowed in oral argument to repeat arguments already stated in the briefs, except when the Court, or any of its members, requests clarification or amplification on any point involved in the appeal".

This suggested provision may, if enforced strictly, accomplish the purpose intended by the proposed amendments, but it has, in my opinion, the advantage of not being too drastic as to prohibit almost completely the argument. It leaves the way open to the parties to appear before the Court at the oral argument, and the question as to whether their arguments are or are not new may be acted upon intelligently by the Justices who at that stage of the proceedings are supposed to have read already the briefs. And while the Justices are listening to the oral arguments and are deciding whether such arguments are new or not new, pertinent and important ideas may at the moment strike their minds which they may wish clarified or modified, and the opportunity is at hand for more enlightenment which the Court may not desire to disregard. Thus, while the purposes intended by the proposed amendments may be fully accomplished, the advantages of an oral argument are not entirely lost.

RULE 49

Rule 49, Section 7. — In the eleventh line the words "submitted for oral argument", the meaning of which is vague, must be changed with the following: "submitted for decision".

RULE 54

When shall the calendar prepared under section 8, Rule 54 be called for assignment of dates for special oral argument? In the Court of Appeals there is section 3 of Rule 46, but none in the Supreme Court.

FORMER RULE 56

Former Rule 56, Section 2. — When all the members of the Court are present and none is disqualified but no majority can be had, what shall be done? The answer to this rule was former Rule 56, section 2, which is deleted.

RULE 67

Rule 67, Section 11. — Add to this provision the requirement of bond, mentioned in Rule 74, section 1, if the judgment is of partition of personal property among heirs.

RULE 74

Rule 74, Section 1. — I suggest that in line 14 after the words "Register of Deeds", the following paragraph be inserted:

"If the decedent left a will, the parties shall file it or cause it to be filed in the competent court for probate, and after the will is probated the heirs and legatees may, without securing letters testamentary, divide the estate extrajudicially among themselves by means of a public instrument and if there is only one heir or one legatee he may adjudicate to himself the entire estate by means of an affidavit. The public instrument, or the affidavit, accompanied by a certified copy of the will and of the order admitting it to probate shall be filed in the office of the Register of Deeds."

In line 16 after the words "sole heir", add "or legatee".

And in line 20 eliminate "Judgment in the action for partition" for it is not extrajudicial partition which is the subject of Section 1, Rule 74. The requirement of bond may be inserted in Rule 67, Section 11, relative to judgment in an action for partition.

RULE 76

Rule 76, Section 4 (Second Paragraph). — It is provided that "if the testator asks for the allowance of his own will, notice shall be sent only to his compulsory heirs." How? If the whereabouts of some or all of the compulsory heirs is not known, how to notify them? I suppose it has to be by publication. But the preceding section, second paragraph, prohibits notice by publication in the newspapers.

RULE 92

Rule 92, Section —. — In Manila, the guardianship proceedings shall be filed in the Juvenile and Domestic Relations Court.

RULE 98

Rule 98, Section 4. — Does not this provision overlap with Rule 107?

RULE 106

Rule 106, Section 1. — In line 5 of this section, I suggest the addition of "of the Province or City" after the words "the Court of First Instance".

Sec. 3. — There is a word connecting lines 3 and 4 of this provision, that is lacking.

RULE 107

Rule 107, Section 7. — I suggest the addition of the words "or otherwise incompetent" after the word "junior" in line 5 of this section.

RULE 110

Rule 110. — With the proviso as to the necessity of reserving the right to bring a separate civil action, Section 3 of this Rule is a mere repetition of Section 2. And the apparently new provision in Section 2 regarding preponderance of evidence is also implied in Section 1. The whole Section 2 is therefore unnecessary. Furthermore, I do not think it advisable to repeat in the Rules of Court the provisions of Articles 31, 32, 33, 34 and 2177 of the Civil Code which are of substantive character intended as exceptions to the general rule. Those provisions may be saved in a general form in the Rules of Court as by the use of the words: "Except as otherwise provided by law."

I suggest:

(a) That in Section 1 the words "Except as otherwise provided by law" be inserted just before the first words: "When a criminal action is instituted..."

(b) That Section 2 be spared.

(c) That Section 3 be made Section 2, but its heading must be: **"Priority of Criminal Action; Exception."** Then, the first words after the title must be: "In determining the priority of a criminal or civil action arising from the same offense the following rules shall be observed;"

At the end of paragraph (b) the following words should be added: "Except when there is a prejudicial question in the civil action requiring the suspension of the criminal action."

(d) That paragraph (c) be made Section 3, the heading of which must be: **"Extinction of Criminal Action, Its Effect in Civil Action."**

(e) Sections 4 and 5 be preserved.

RULE 111

Rule 111, Section 4, 7 and 14. — I think the only inquiry which a Judge of 1st Instance may make under Section 4 is merely a "preliminary examination" in the manner provided in Section 6 and not a "preliminary investigation in the manner provided in the following sections." For this reason, I suggest that the word "investigation" appearing twice in Section 4 be substituted for "examination," and that the words "in the manner provided in the following sections" be substituted for "substantially in the manner provided in Section 6."

The second paragraph of Section 4 should be transferred to a section which must be numbered 15, that is, after Section 14.

As to Section 7, I think by the word "investigation" is meant "examination" and must be changed.

As to Section 14, I suggest that the 3rd paragraph be transferred to the new Section 15.

Allow me to offer a draft of Section 15 which absorbs the second paragraph of Section 4 and the third paragraph of Section 14 with amendment. It is as follows:

Section 15. — **Effect of Preliminary Investigation by Fiscal Re-investigation.** When a preliminary investigation has been conducted by the Provincial or City Fiscal or State Attorney in the manner provided in the preceding section, the accused is not entitled as of right to another preliminary investigation, but he is entitled to a reinvestigation when the preliminary investigation had been conducted but not in accordance with the procedure provided in the preceding section or when no preliminary investigation had been conducted before the case was filed in court. When, however, the preliminary investigation had been conducted by a Justice of the Peace or Municipal Judge, the accused having been given an opportunity to be heard, it is discretionary upon the Fiscal to open a reinvestigation.

(Note: The last sentence is taken from Villanueva v. Judge Gonzalez 52 O.G., 5497).

RULE 114

Rule 114, Section 12. — I suggest:

(a) That after the word "officer," the word "or of a private person" be inserted in the heading;

(b) That in the 2nd line the words "or a private person" be inserted after the word "officer." This omission of these words is evident from the wording of Section 13.

RULE 113

Rule 113, Section 13. — I suggest that the second paragraph be transferred as Section 10 of Rule 122, with the heading "Dismissal of appeal."

RULE 121

Rule 121, Sections 3, 4, 5, 6. — The words "Fiscal and the offended party in a proper case" in Section 3 presuppose an appeal by the accused. What would be the procedure if the prosecution is the appellant? I suggest that this Section be left unamended.

Section 4 contains the new words "upon the offended party or his counsel" implying that only the accused may appeal, when under Section 2 "either party may appeal."

The same may be said of Sec. 5.
I suggest that Sections 4 and 5 be also left unamended.

Section 6 computes the period of appeal from rendition of judgment or order appealed from. I suggest that it should be from **promulgation or notice** of judgment or order appealed from.

PROCEDURE IN THE SUPREME COURT

In Rule 54 and 124 dealing with procedure in the Supreme Court in civil and criminal cases, respectively, no provision can be found as to how the Court shall proceed in case a majority cannot be had. There was Rule 56, Sec. 2, on the matter but it is deleted in the proposed Rules. The Judiciary Act contains no provision on the matter.

EVIDENCE

Rule 129, Section 2. — The original provision is as follows: "There can be no evidence of a writing other than the writing itself, the contents of which is the subject of inquiry, except..." This provision contains a definition of what original means, namely, the writing itself, the contents of which is the subject of inquiry. In other words, original does not necessarily mean the first paper written, in contrast to a copy or transcript made later. The original depends upon the issue to be proved. If a writer sends an article to a newspaper for publication and the article published turns out to be libelous, to prove the authorship of the article the original would be the manuscript sent to the editor because it would be the writing relevant to the issue. But to prove the publication, the original would be any copy of the newspaper containing the article, because such copy would be the writing relevant to the issue. Again, when a witness in a criminal case testifies that he saw the killing since he was then in the house of the killed man to whom he had just delivered a promissory note, the best evidence rule does not apply to the promissory note, the contents of which is not in issue in that criminal case.

In the proposed provision, the definition of what original appearing in the original provision means, has disappeared, and although the word "original" is used therein, its meaning is not defined or explained.

I do not think there is any need of amending the provision which is correct.

Rule 129, Section 21. — In this provision, the marital privileged communication is restated but the exception eliminated. In the original provision (Rule 123, Section 26 "d"), the privilege "does not apply to a civil case by one against the other, or to a criminal case for a crime committed by one against the other."

I cannot see the reason why this exception is eliminated. The Committee of the American Law Institute of which Prof. Morgan was the chairman and Prof. Wigmore one of the advisers, in drafting the marital confidential communications privilege, reiterated the exception that is mentioned above and eliminated (See Rule 215 and 216 of the Model Code of Evidence).

Rule 129, Section 32. — Limiting this provision to declarations against "pecuniary or proprietary interest" gave rise to decisions which are clearly contrary to elementary notions of justice and have been the subject of severe criticisms by Justices and Professors. The Code of Evidence, responsive to these well founded criticisms, offers a provision that cures all the deficiencies pointed out by Prof. Wigmore as quoted in Peo. v. Toledo 51 Phil. 825.

I suggest, therefore, that the words "his pecuniary or proprietary" be deleted from lines three and four of the provision, and that at the end of said provision the following be added: "A declaration is

against the interest of a declarant if the fact asserted in the declaration was at the time of the declaration so contrary to the declarant's pecuniary or proprietary interest or so subjected him to civil or criminal liability or so rendered invalid a claim by him against another or created such a risk of making him an object of hatred, ridicule or social disapproval in the community that a reasonable man in his position would not have made the declaration unless he believed it to be true." (See Rule 509 "1".)

Rule 129, Section 39. — Books and Maps. This provision is deficient and very limited in its scope. The only qualification required from the author of the book of history, science or art is that he be indifferent between the parties regardless of whether he is or he is not competent. Upon the other hand, there are pamphlets, journals, periodicals, calendars and books that are considered to be reliable among people who are interested in the subject matter dealt with therein and which are admissible in evidence in a great many courts in the United States but are not admissible here. Professor Wigmore makes a very extensive and learned study on this matter in his book, and the Committee of the A.L.I. that drafted the Model Code of Evidence offers two sections that cover the whole problem. The study made by Prof. Wigmore is indeed persuasive.

I suggest that this Section 39 of Rule 129 be substituted by the following:

Sec. 39. **Commercial Lists and the Like.** Evidence of statements of matters of interest to persons engaged in an occupation contained in a list, register, periodical, or other published compilation is admissible as tending to prove the truth of any relevant matter so stated if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein.

Sec. 39a. Learned Treatises. A published treatise, periodical or pamphlet on a subject of history, science or art is admissible as tending to prove the truth of a matter stated therein if the Court takes judicial notice of it or a witness expert in the treatise, periodical or pamphlet is recognized in his profession or calling as an expert in the subject.

As comment on these two sections, I refer to the book of Prof. Wigmore. I am sorry I cannot mention the volume and page because I do not have the book with me in this foreign country.

Rule 131, Sections 20 to 34. — These provisions contain definitions of public and private writings, the different means of proving public

and private documents, the effect of alterations in documents, etc. I suggest that they should not be placed among the provisions concerning procedure in the examination of witnesses, but in the place dealing with Documentary Evidence in general appearing after Rule 129, Section 1.

Rule 133. — Perpetuation of testimony. This rule is situated immediately after "Weight and Sufficiency of Evidence" and as the last rule on evidence. Formerly, this Rule was placed in the group of provisions on depositions and discovery to which it belongs properly by reason of their mutual affinity. As a matter of fact, perpetuation of testimony is a deposition before action and was so named. I cannot find the reason why now this Rule is removed from its proper place and thrown away so far to a strange place.

The changes introduced in the Rules of Court are not many, and it would be easier for the Bench and Bar to find and grasp them if the order of sequence of the unamended provisions had been left unaltered.

In connection with Evidence, only two amendments are introduced in the Revision, but the method of distribution of the different provisions on the matter is changed. The question of method is a question of taste. But it is perhaps convenient to clarify the method attempted to be followed by the former rules. Under that method the means of proof were classified in accordance with the different sources of knowledge. We come to know a fact either because we have seen it, or because it was told to us, or because of circumstances from which we may infer the fact. So there are three sources of knowledge, namely: (1) Our own senses; (2) testimony of men including documents which are but testimony in writing; and (3) Inferences. Accordingly, the means of proof are classified into: (2) Real or Demonstrative evidence; (2) Testimonial, including documentary evidence; and (3) Circumstantial Evidence.

However, it is logical that the study of the different means of proving facts, must be preceded by the provisions on facts that need not be proven, which are: (1) Facts within the knowledge of Courts (Judicial Notice); (2) Facts presumed by law, (Presumption); and (3) Facts admitted or confessed. (admissions and confessions)

Thus the subject of Evidence was planned as follows:

PART A

General Provisions

Definition, uniformity and admissibility in general.

PART B

Facts which need not be proven

(1) Judicial Notice;
(2) Presumptions;
(3) Admissions; and
(4) Confessions.

PART C

Sources of Evidence

(1) Real Evidence

(2) Testimonial
  (a) Qualification of Witness; (ordinary and expert)
  (b) Privileges
  (c) Exceptions to Hearsay
  (d) Documentary Evidence
  (e) Parole Evidence
  (f) Statute of Frauds
  (g) Interpretation of Instruments

(3) Circumstantial Evidence
  (a) Moral Character
  (b) Similar Acts
  (c) Collateral Facts in general

PART D

Burden of Proof

(a) Burden of Evidence and of proof
(b) Offer of Evidence
(c) Objection
(d) Ruling
(e) Offer of testimony of witnesses
(f) Order in the examination of witnesses
(g) Regulations regarding examination
(h) Preponderance of Evidence
(i) Proof beyond reasonable doubt
(j) Weight and Sufficiency of Evidence
(k) Evidence on Motion

But in the deliberation, the plan could not be carried out exactly, because of other influences that prevailed in part, like the Code of California and of other States of the American Union.

But, as stated in the beginning, the question of method is a question of taste.

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