The ATENEO LAW JOURNAL is published bi-monthly, July through March,
ıe Faculty and Student Body of the College of Law, Ateneo de Manila,
RACIAS T. REYES, Dean, under the direct management of the College of Law
ity of St. Thomas More, REV. AUGUSTINE M. BELLO, S.J., Regent of Law
Student Counsellor. Subscription: ₱1.50 this number.
Copyright 1951 under Act 3134, by the College of Law, Ateneo de
la. All rights reserved. Reproduction of editorial matter in any manner,
ıole or in part, without written permission from the publisher is prohibited.

VOLUME 1 MARCH 1952 NUMBER 4

ATENEO LAW JOURNAL

CRIMINAL EVIDENCE: ADMISSIBILITY OF THIRD PARTY DECLARATIONS AGAINST PENAL INTEREST*

Ernesto P. Pangalangan

"The law has got to be stated over again. And I venture to say that in fifty years we shall have it in a form of which no man could have dreamed fifty years ago."—Justice OLIVER WENDELL HOLMES, Oration at the Harvard Law School Association at Cambridge, 1886.

LET us start with an example. Suppose Joe Palooka was indicted for the murder of one, Casey Ruggles, and during Joe Palooka's trial, his defense counsel attempts to introduce as evidence the written confession of a certain Li'l Abner, who recently died, admitting that he killed the deceased, Casey Ruggles—should Li'l Abner's confession be admitted as evidence in the trial of Joe Palooka?

Confronted by such a question the immediate reaction of the legal mind is to ask *"What is the law?"*

The question deals with the admissibility of evidence. It follows that we are concerned primarily with the law on evidence. The law on evidence in this jurisdiction is contained in Rule 123 of the Rules of Court.

Section 27, Rule 123, excludes the admission of hearsay evidence. The said section embodies what is known as the *hearsay rule,* which has been defined as *"that rule which prohibits the use of a person's assertion as equivalent to testimony to the fact asserted, unless the assertor is brought to testify in court on the stand, where he may*

* This is a condensation of the writer's thesis submitted in connection with a course in Legal Research, under Prof. Jesus de Veyra, of the Ateneo College of Law.

be probed and cross-examined as to the grounds of his assertion and of his qualifications to make it." [1]

The written confession of Li'l Abner is distinctly hearsay because the assertor cannot be brought to testify in court on the stand "where he may be probed and cross-examined as to the grounds of his assertion and of his qualifications to make it." Hence, under the hearsay rule, the same is inadmissible.

But there are exceptions to the hearsay rule, and among them is a declaration against interest. It has become uniformly established that a declaration against interest although hearsay, is admissible as evidence, for "if a man's swearing for his interest can give him no credit, he must certainly give most credit when he swears against it." [2]

The rule sanctioning the admissibility of declarations against interest, as an exception to the hearsay rule, is contained in Section 29, Rule 123, which provides:

> "The declaration made by a person deceased, or, outside of the Philippines, or unable to testify, *against his pecuniary or proprietary interest,* with sufficient knowledge of the matter by him stated, may be received in evidence *against his successors in interest and against third persons."* [3]

The wording of this section establishes limitations on what kind of interest must be involved, so as to be an exception to the hearsay rule, and against whom the declaration may be utilized. The section reads *"pecuniary or proprietary interest"* and *"against his successors in interest and against third persons."*

In so far as the law is concerned, Li'l Abner's confession is inadmissible, because the confession is not, strictly speaking, against the "pecuniary or proprietary interest" of the declarant, although against his penal interest, and, even if it were, it cannot be used *in favor of,* but only *against* third persons.

There is but one case in this jurisdiction in which our

---

[1] 5 Wigmore on Evidence, 3rd ed., p. 9.

[2] Gilbert, Evidence, 137. Cited in 5 Wigmore on Evidence, 3rd ed., pp. 280-281.

[3] Author's italics.

Supreme Court had occasion to pass upon the question of admissibility of a third party declaration against penal interest—the case of *People v. Toledo and Holgado,* 51 *Phil.* 825, decided on August 6, 1928. But the ruling is indecisive, three of the Justices holding that the evidence is admissible as a declaration against interest, two holding that it was admissible as a part of the *res gestae,* and two others refraining from discussing the admissibility of the evidence. In the absence of a settled ruling by the Supreme Court, the law embodied in Section 29, Rule 123, stands as written and must be taken as it is.

Why should the rule be so? Why should there be a distinction between declarations against pecuniary or proprietary interest and declarations against penal interest? Why should it be admissible in the former, but not in the latter? Why should the rule be so worded that the declaration against interest can be used *against* but not *in favor of* third persons? These, indeed, are disturbing questions. Yet it is not for us to pass judgment on the rule too soon. We should not *"rush in where angels fear to tread."* The proper course of action is to trace the history of the rule, investigate its basis, marshall the reasons for and against it and, after having done all these, arrive at a reasonable conclusion.

The Rule Is Supported By Authority

The section above-cited, limiting declarations against interest to those against pecuniary or proprietary interest and excluding declarations against penal interest, is supported by what authors call the "overwhelming weight of authority." To quote from American Jurisprudence, Volume XX, Section 495:

> "According to the overwhelming weight of authority, a confession on the part of a third person that he committed the crime which the defendant is charged with having committed, even though it is made in expectation of imminent death, or by a person jointly indicted with the accused is not admissible as substantive evidence tending to exculpate the accused where the confession does not constitute a part of the *res gestae."*

There is an almost unending line of decisions in Ame-

rica and in England stating categorically that declarations against penal interest are neither pecuniary nor proprietary within the meaning of the rule, and, therefore inadmissible in evidence.[4] Their unanimity, to borrow the words of the editorial annotation in 37 L.R.A. (NS) 346, is *"as complete as the shock which they give the general sense of justice."* Those decisions, although of the Common Law System, may be cited with authority in this jurisdiction, because our Rules of Court merely restated most provisions of the Code of Civil Procedure, based mainly on the California Code of Civil Procedure, and borrowed liberally from the Federal Rules of Civil Procedure and the Rules of Civil Procedure by the American Judicature Society.

History of the Rule

Dean Wigmore, called by our Supreme Court in the case of *People v. Toledo and Holgado,* 51 *Phil.* 825, "one of the greatest living authorities on the law of evidence", said that the exception appears to have taken its rise chiefly in two separate rivulets of rulings, starting independently as a matter of practice—on the one hand, the rule was established to receive account-entries of a deceased person, and on the other hand a practice obtained of receiving declarations in disparagement of one's proprietary title; that at the beginning of the 1800's a unity of principle for these independent precedents came gradually to be perceived and argued for—the unity lying in the circumstance that they concerned matters prejudicial to the declarant's self-interest, were fairly trustworthy and might therefore (if he were deceased) be treated as forming an exception to the hearsay rule; that from 1800 to about 1830 this was fully understood as the broad scope of the principle; but that in 1844 in a case in the House of Lords not strongly argued and not considered by the judges in the light of precedents, a backward step was

[4] There is a long list of cases sustaining inadmissibility in the following references: 20 Am. Jur. pp. 428-429; 5 Wigmore on Evidence, 3rd ed., pp. 281-290; 37 L. R. A. (NS) 347; 35 A. L. R. 442; 3 Jones on Evidence, rev. ed., pp. 2137-2139; 162 A. L. R. 437; 1 Wharton's Criminal Evidence, pp. 686-690; 167 A. L. R. 390.

taken and an arbitrary limit put upon the rule—the court excluding the statement of a fact subjecting the declarant to a criminal liability and holding that the statements which are admissible must be either pecuniary or proprietary interest; and that thenceforward in England and in America this ruling, although plainly a novelty at its inception, was accepted.[5] We may add to Dean Wigmore's summary that from the United States, the rule found its way to the Philippines. Section 29, Rule 123, is a restatement of Sections 282, 298(4), and 328(1), of Act 190, Code of Civil Procedure.[6] In turn, Sections 282, 298, and 328 of the Code of Civil Procedure were taken from the California Code of Civil Procedure, Sections 1853, 1870, and 1946, respectively.[7]

Reasons for the Rule

The law is essentially rational. Hence, to understand the rule, the reasons which give it life must be known. To know those reasons, the cases demonstrative of them should be read. It would be burdensome, however, to examine those cases in detail. Under the circumstances, the proper thing to do is to glean from the spawning mass of cases supporting the present rule the reasons which the courts have given in support of their positions.

The principal grounds for rejecting third party declarations against penal interest are two, namely:

1) Such evidence is hearsay.
2) Admitting such evidence opens the door to fraud and perjury.

Such Evidence Is Hearsay

That a third party declaration is hearsay, especially when it is oral, is undisputed. In the case of *Donnelly v. United States,* 228 *U.S.* 243, 57 *L. ed.* 820, 33 *Sup.* 449, the Supreme Court of the United States held:

"Hearsay evidence with a few well-recognized exceptions,

[5] 5 Wigmore on Evidence, 3rd ed., p. 281.
[6] 3 Moran on Rules of Court, 1950 ed., p. 329.
[7] Recto, *Code of Civil Procedure Annotated,* pp. 110, 114, and 123.

is excluded by courts that adhere to the principles of the common law......

* * *

One of the exceptions to the rule excluding it is that which permits the reception, under certain circumstances, and for limited purposes, of declarations of third parties, made contrary to their own interest; but it is almost universally held that this must be an interest of a pecuniary character; and the fact that the declaration alleged to have been thus extrajudicially made, would probably subject the declarant to a criminal liability, is held not to be sufficient to constitute an exception to the rule against hearsay."

In the case of *Brown v. State,* decided by the Supreme Court of Mississippi, 37 L. R. A. (NS) 345, 99 Miss. 710, 55 SO. 961, the court was even more vocal, holding:

> "It is well settled that testimony going to show confessions and admissions on the part of third persons made out of court, is not admissible in exculpation of those on trial for crime. It is mere hearsay and is excluded for this reason although other reasons exist in the uncertainty to which it would subject all criminal proceedings...
>
> * * *
>
> ...It is all hearsay; and no just exception can be made because the party confessing has put himself in a position of some hazard. Many motives apart from the love of truth and justice, induce men to assume the gravest risks.
>
> * * *
>
> The extreme case of a confession on the gallows by one claiming to be the true offender, employed by Wigmore to illustrate his views affords no ground for the relaxation of the rule; for the experience assuring us that the last breath of men not wholly bad, is sometimes employed in the asseveration of a falsehood, justifies the rejection of the hearsay statements of a malefactor, who, having no longer any concern as to his own fate, may wish to serve a 'pal', a kinsman, or a friend."

Admitting Such Evidence Promotes Fraud and Perjury

In several decisions, the argument of possibility of fraud and perjury as justifying rejection of third party

declarations against penal interest have been eloquently pronounced. The Supreme Court of Maryland, in the case of *Brennan vs. State of Maryland,* 48 *A. L. R.* 342, 151 *Md.* 265, 134 *Am.* 148, stated as its reason for adhering to the prevailing rule:

> "Everyone accused of crime would be tempted to introduce perjured testimony concerning statements of some third person, then beyond the jurisdiction of the court, admitting that such third person and not the defendant, had committed the crime in question, and the experience of courts renders it certain that many would yield to such a temptation."

While the Supreme Court of Georgia, similarly held in the case of *Lyon vs. State of Georgia,* 22 *Ga.* 399, 401, in words no less powerful:

> "All one defendant would have to do would be to admit that his guilty accomplice was innocent and that he himself had perpetrated the crime, absent himself so as to enable the party on his trial to have the benefit of his admission, and after his acquittal, appear, demand his trial, and prove by the evidence of the acquitted party that he was in fact the guilty person."

The Supreme Court of Oklahoma also adheres to the view that third party declarations against penal interest are inadmissible as evidence, holding in the case of *Davis vs. State of Oklahoma,* 8 *Okla. Cr.* 515, 128 *Pac.* 1097, that ...

> "It would be impossible to convict any thief (if such evidence were admissible) because he could always find witnesses who would testify that they had heard some one who was absent confess to being guilty of the crime. To hold that such evidence was competent would put a premium on fraud, make perjury safe, and place the state at the mercy of criminals."

REASONS AGAINST THE RULE

The practical unanimity of many courts upholding the inadmissibility of third party declarations against penal interest does not forbid a consideration of the points which show the justice of a contrary view, and should

not preclude the adoption of such a view if found to be sound and reasonable.

It has been wisely said that the purpose of all evidence is to get at the truth, and the rules, if they are to rest upon reason, must clearly show that they are peculiarly adapted to the development of the truth of the facts. It follows that the rules of evidence are not fixed, either by reason of precedent or venerable age, beyond the possibility of change. The law of evidence is a constantly expanding phase of jurisprudence and its rules are moulded and applied according to the needs of justice, to meet the changes made by the progress of society. Such rules are not rigidly adhered to when to do so would be subversive of the ends for which they were adopted. They yield to experience which demonstrates their fallacy or unwisdom.[8]

It cannot be denied, of course, that precedents in law and jurisprudence are of vast importance. They serve to stabilize legal thinking, to keep it on an even keel. Nor can it be denied that the principle of adherence to precedents, technically called *"stare decisis"*, is a legal principle long recognized and entitled to the utmost respect. But it seems equally undeniable that a slavish attachment or blind adherence to legal precedents which cannot stand the tests of reason, common sense, and justice would be dangerous. Indeed, there can be no greater enemy to the progress of law than unreasoned authority.

The present rule admitting declarations against pecuniary or proprietary interest, but denying declarations against penal interest have been severely criticized by many. Their reasons may be summarized as follows:

1. *The distinction is absurd and illogical.*

Is it true that the distinction is absurd and illogical? Nothing can be more apparent. In a brief but carefully worded opinion, although dissenting, penned by Justice Holmes and concurred in by Justices Lurton and Hughes, the learned justice held in the case of *Donnelly vs. United*

[8] 20 Am. Jur. pp. 34-35.

States, 228 *U. S.* 243, 57 *L. ed.* 820, 33 *S. Ct.* 449:

> "The rules of evidence are in the main based on experience, logic, and common sense, less hampered by history than some parts of substantive law. There is no decision by this court against the admissibility of such a confession; the English cases since the separation of the two countries do not bind us; the exception to the hearsay rule in the case of declarations against interest is well-known; no other statement is so much against interest as a confession of murder; it is far more calculated to convince than a dying declaration."

In a dying declaration, a man may fix the crime on another; in a confession of crime, the confessor fixes the crime on himself. If we consider as safeguarded from falsehood a declaration that another is the guilty person, which actually is the prevailing rule, why deny the same safeguard to a declaration fixing the crime on the declarant?

Again, if the declarant did not die, or did not leave the jurisdictional limits of the country, or if he were in any way available, the declaration he made against his penal interest would be admissible against him. But, because he died or otherwise became unavailable, the declaration is inadmissible to exculpate another. And yet, the truth of the declaration in the first case is not different from the latter case.

Finally, a comparison of the value of life, liberty, and honor as against the value of property or money to an ordinary person shows the lack of logic in the rule excluding evidence of admissions made with respect to the former, but admitting them with respect to the latter. The more valuable a thing is to a man, the greater is his desire to preserve it; and when he says something in disparagement of it, the greater should be the credence given to it. The present rule, however, ignores these simple truths. It gives emphasis where no emphasis is due; it tends to be weak where it ought to be strong. On what grounds can it be said that a man might truly make a statement detrimental to his property interest, and yet not truly make a statement which might involve penal servitude for life or even capital punishment?[9]

2. *The distinction is contrary to human experience.*

To say that a declaration against pecuniary or proprietary interest is admissible as an exception to the hearsay rule, but not a declaration against penal interest, is tantamount to saying that "while a man who makes admissions against his pecuniary or proprietary interest will be presumed to tell the truth, he will be presumed a liar when his statement is against penal interest."[10] This is contrary to human experience. A man, in order to vindicate his honor or preserve his life or liberty may even exhaust his entire material wealth. Life or liberty is much more important to him than money or property.[11]

3. *There is as much purpose in one as in the other?*

The Supreme Court of Virginia in the case of *Hines v. Commonwealth,* reported in 136 Va. 728, 117 S. E. 843, 35 A. L. R. 431, in which it rendered a ruling diametrically opposed to the prevailing rule, held:

> "But why this distinction? Is a man more likely to speak the truth to his own hurt about a pecuniary obligation or boundary line than about the more serious matter of his responsibility for crime? If it is reasonable and safe to assume that the principles of self-protection and self-interest will sufficiently guarantee the truth in the former intances, it would seem equally reasonable and safe to assume that the same principle would answer a like purpose in the latter instance?"

4. *A confession of crime is also pecuniary in nature.*

Chief Justice Moran in discussing the admissibility of declarations against penal interest, after saying that in truth and in fact such a declaration is even more against interest than a mere declaration against pecuniary or proprietary interest, said:

> "Furthermore, a confession of murder may be considered in the Philippines as a declaration against pecuniary interest because the confessing party is thereby liable to pay indemnity to the victim's heirs."[12]

---

[9] Am. Ann. Cas. 1913E, 710.
[10] 37 L. R. A. (NS) 349.
[11] 3 Moran on Rules of Court, 1950 ed., pp. 330-331.

Moran's view strangely agrees with the view of Justice Hilton of the Supreme Court of Mississippi, who declared in his dissenting opinion in the case of *State v. Voges* (1936), 197 *Miss.* 85, 266 *N. W.* 265:

> "Where a statement is likely to result in criminal penalties, the statement is even more against the interest of the declarant than when it is against only his pecuniary or proprietary interest. Often such a statement might be against declarant's pecuniary interests as well. An admission of having killed or injured a person may, in some instances, result in the declarant having to respond in damages."

The view of Chief Justice Moran and Justice Hilton finds solid support in the provisions of Title Five, Book One, Arts. 100-113 of the Revised Penal Code, providing for civil liability attached to crimes, and in Articles 2202, 2204, and 2206 of the Civil Code of the Philippines, providing for the defendant's liabilities for damages in criminal cases.

5. *The rule is contrary to the principle of confessions.*

The present rule is also against the universally accepted principle that "it is assumed that a confessor will not speak falsely to his own hurt."[13] Chief Justice Moran declared with reason that:

> "A confession is admissible evidence of a high order. There is a strong presumption that no sane person would deliberately confess the commission of a crime, unless prompted to do so by truth and conscience."[14]

The succeeding passages cited by Dean Wigmore[15] further bolsters our view that the principle behind the admissibility of confessions of guilt has attained a secure position in law and jurisprudence.

> "Confessions of guilt...are at common law received in evidence as the highest and most satisfactory proof of guilt, because it is fairly presumed that no man would make

---

[12] 3 Moran on Rules of Court, 1950 ed., p. 329.
[13] 20 Am. Jur. p. 429.
[14] 3 Moran on Rules of Court, 3rd ed., p. 99.
[15] 5 Wigmore on Evidence, 3rd ed., pp. 280-281.

such a confession against himself if the facts confessed were not true." [16]

"There is no legal principle better established than that a free and voluntary confession is deserving of the highest credit; for it is not to be presumed that one will falsely accuse himself of a crime especially when he knows that a conviction of it will incur a forfeiture of his life." [17]

"We may proceed upon the common experience of men's motives of action and of the tests of truth. Now few things happen seldomer than that one in the possession of his understanding should of his own accord make a confession against himself which is not true." [18]

"The confession is admissible on the presumption that a person will not make an untrue statement criminating himself and militating against his interest." [19]

6. *The rule is against the legal maxim safeguarding innocence.*

We may consider the rule also as contravening the general maxim "*Better ninety-nine guilty should escape than that one innocent person should suffer.*" The rules of criminal procedure, it will be observed, while so framed as to bring criminals to justice, are at the same time designed to protect the innocent. Indeed, the rights of the accused have been given the dignity of being enshrined in the Constitution. They are included in the Bill of Rights.

This particular rule of evidence which prohibits the admission of third party declarations against penal interest in the trial of another goes against the original design of framing criminal laws and rules of procedure so as to protect the innocent. It prevents the accused from presenting a legitimate fact which might break the force of criminative facts asserted against him. [20] It denies him the probative value, probable or improbable, of a piece of evidence, which, if true, might go a long way in exculpating him.

7. *The distinction cannot be justified on grounds of policy.*

[16] 1291, Lambe's case, 2 Leach, Cr. L. 3rd ed., 628.
[17] 1846, State v. Kirby, 1 Stobh. 156.
[18] 1847, State v. Cowan, 7 Ired. N. C. 246.
[19] 1875, Levision v. State, 54 Ala. 525.
[20] Pace v. State, 13 SW 379, 380, 61 Tex. Cr. R. 436.

Neither can the prohibition be justified on grounds of policy.

"The only plausible reason of policy that has ever been advanced for such a limitation is the possibility of procuring fabricated testimony to such an admission if oral. This is the ancient rusty weapon that has always been brandished to oppose any reform in the rules of evidence, viz., the argument of danger of abuse. This would be a good argument against admitting any witnesses at all, for it is notorious that some witnesses will lie and that it is difficult to avoid being deceived by their lies. *The truth is that any rule which hampers an honest man in exonerating himself is a bad rule, even if it also hampers the villain in falsely passing for an innocent.*" [21]

If the policy of the limitation is to close the door to falsehood, the question is solely of weight and credibility. Who can deny that it is better to let the court exercise its function to weigh the evidence rather than make an ironclad rule which excludes all such confessions altogether? In the nature of things, by the laws of chance or otherwise, some of them might be true. [22]

In this connection, it is useful to remember that an *alibi* is *easily manufactured and usually so unreliable that it can rarely be given credence*."[23] And yet *alibis* are not totally excluded as evidence; it is only required that they be established by clear, convincing and satisfactory evidence. Why? Because in the nature of things, an *alibi* might be true. The same reason for the admissibility of an *alibi* as defense is what we now invoke for the admissibility of a third party declaration against penal interest.

In the case of *Hines v. Commonwealth*, the Supreme Court of Virginia held:

"Nor can it be fairly said that public policy demands a limitation of the exception to declarations against money or property rights. We are not concerned merely with the

[21] 5 Wigmore on Evidence, 3rd ed., pp. 288-289. Italics ours.
[22] 37 L. R. A. (NS) 351.
[23] 3 Moran on Rules of Court, 1950 ed., p. 623, citing the cases of U.S. Olais, 36 Phil. 828; People v. Limbo, 49 Phil. 94; People v. Dizon et al, *supra;* People v. de la Cruz, 43 O. G. 478; People v. Bondoc, L-2278, Feb. 27, 1950; and People v. Ramos, L-2171, Mar. 4, 1950.

and study conducted by the American Law Institute. The first paragraph of the rule defines what may be considered a declaration against interest; it includes a declaration which might subject the declarant to criminal liability. The second paragraph makes such declarations admissible as evidence, provided the requirements for a valid confession under Rule 505, same code, are fulfilled. We are interested mainly in the first paragraph. This paragraph with a little modification, if any is desired to make it fit into our legal system, can be inserted as an independent section of Rule 123, Rules of Court.

If the first paragraph of Rule 509, A. L. I. Model Code of Evidence were inserted in our Rules of Court as an independent section, then Section 29, Rule 123, may be amended to read thus:

> "The declaration made by a person deceased, or outside of the Philippines, or unable to testify, against his pecuniary, proprietary, or *penal interest*, with sufficient knowledge of the matter by him stated, may be received in evidence against his successors in interest and *in favor of* third persons." [28]

The rule as thus amended includes declarations against penal interest, and makes such declarations admissible against the declarant's successors in interest and *in favor of* third persons. The insertion of the phrase *"in favor of"* is deemed necessary. The declaration may be received in evidence *against* the declarant's successors in interest; this must be so, because his successors in interest stand in the place of the declarant. But to make the declaration admissible *against third persons* does not seem logical for two reasons: (1) If it is *against* the declarant's successors in interest, then it must be *in favor of* someone, who cannot be other than a third person or the opposing party; (2) To make the declaration admissible *against* a third person seems to trench upon the principle of *res inter alios acta.*

These amendments are offered with no little trepidation. We can lay no claim to erudition and experience

[27] 3 Moran on Rules of Court, 1950 ed., p. 336.
[28] Amendments are in italics.

in the law. To assume the role of a critic is the height of presumption. But the amendments are offered in the spirit of an earnest searcher after justice. If they but serve to awaken deeper thinking on the subject, though their fallacies be later on demonstrated, if they have any, that would be sufficient compensation for the trepidation and hesitancy that accompanied them at their very inception.

Conclusion

The Philippines, where there is still no settled ruling on the question and where civil liability for crimes is expressly provided, supplies a field where reform in the rules of evidence applicable to the point at issue may be made with greater freedom than in the United States or England. Our country might as well take the lead in getting rid of a "barbarous doctrine", as Dean Wigmore described the present rule, and in abandoning a long line of unsound precedents by placing in its Rules of Court a clear-cut rule making declarations against penal interest admissible *within defined and ascertainable limits.* In so doing, the Philippines has no reason to be afraid of being accused of a mere whimsical change. The injustice of the present rule and the need for a change have been adequately demonstrated. The law of evidence is a field where reforms may be had with greater freedom than is afforded in substantive law. *"The considerations of policy that dictate adherence to existing rules where substantive rights are involved,"* declared Justice Cardozo, *"apply with diminished force where it is a question of the law of remedies."* [29]

Of course, we must frankly admit that the rules and amendments we have in mind are not perfect; they cannot solve all situations which might arise in the course of human experience. The same thing is true of other rules. Man despite his ingenuity still remains basically a frail creature, and when his passions run high his regard for rules dissipates. The words of Wigmore in his Preface to the Third edition of his Code of Evidence beautifully state what we need:

"But after all, it is the spirit that gives life to the rules: ALL THE RULES IN THE WORLD WILL NOT GET US SUBSTANTIAL JUSTICE IF THE JUDGES AND THE LAWYERS HAVE NOT THE CORRECT LIVING MORAL ATTITUDE TOWARDS SUBSTANTIAL JUSTICE."

[29] Cardozo, *Nature of Judicial Process*, p. 156.

ON TAXING THE INCOME OF RELIGIOUS EDUCATIONAL INSTITUTIONS

Luis A. L. Javellana *

THE power to tax is a power inherent in every sovereign state. It is a power that is not conferred, but one that exists from the very birth of a sovereign state and subsists as long as that state exists. The existence of such a power proceeds from the theory that since individuals and properties within a state enjoy protection from such state, they must support the state in order not to lose the protection which the latter affords to them. In the Philippines, as in the United States, this otherwise unlimited power, which has been said to "involve the power to destroy", is checked by Constitutional provisions which regulate, limit, and sometimes even deny the exercise of such power. An unbridled power to tax would destroy the very objects sought to be protected, and eventually the very existence of a state. Obviously, either too little or too much of such power would produce the same disastrous effect.

It is in times of stress and abnormalcy that this power to tax and the deterrent provisions of the Constitution are put to a test. The conditions in the Philippines today are admittedly abnormal and distressing. A young independent Republic, she is faced with the gigantic task of rebuilding a country laid waste by war and whose populace has become either destitute or disgruntled. She is faced with the task of rehabilitation to be financed from empty coffers sucked clean by an enemy whose four years of occupation have all but drained the natural re-

* Ll. B., Ateneo, '51