

**ALLISON J. GIBBS, AS EXECUTOR OF THE WILL OF A. D. GIBBS,
DECEASED, ALLISON J. GIBBS AND FINLEY J. GIBBS, PLAINTIFFS AND
APPELLEES, VS. EULOGIO RODRIGUEZ, SR., LUZON SURETY CO.,...**

G.R. No. L-1494. August 03, 1949

Ponente: FERIA, J.

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FERIA, J.:

On August 22, 1945, plaintiff filed a complaint alleging, among others, the following:

"(4) That on April 18, 1941, pursuant to a preliminary 'Agreement of Purchase, Sale and Mortgage,' dated April 11, 1940, Allison J. Gibbs, acting for himself and as attorney-in-fact for Allison D. Gibbs and Finley J. Gibbs, sold by a document entitled 'Deed and Mortgage' said two parcels of land and the improvements thereon to Raymundo F. Navarro and R. F. Navarro & Co., for the sum of One hundred twenty-five thousand dollars (\$125,000), United States currency, of which Twelve thousand five hundred dollars (\$12,500), United States currency, was paid in cash; that Raymundo F. Navarro and R. F. Navarro & Co., in the said 'Deed and Mortgage' mortgaged the said two parcels of land in favor of Allison D. Gibbs and Finley J. Gibbs, to secure the payment of the balance of the sale price which they agreed to pay to the said mortgagees in annual installments, plus 5 per cent interest on the deferred payments. * * *.

"(5) That the first installment of \$16,875, United States currency, due on April 11, 1941, was paid to the said mortgagees, but none of the other installments totalling \$126,562.50, United States currency, have been paid and are now due and owing.

"(6) That on August 12, 1941, R. F. Navarro, for himself and in his capacity as president of R. F. Navarro & Co., by document entitled 'Deed of Sale with Assumption of Mortgage,' sold said property for the sum of forty-thousand pesos (P40,000), Philippine currency, to Eulogio Rodriguez, Sr., who in said document assumed and agreed to be bound by the obligation of the mortgage existing thereon in favor of the mortgagees, Allison D. Gibbs, Allison J. Gibbs and Finley J. Gibbs, and all the covenants, agreements, stipulations and conditions relating thereto, as recited in said 'Deed and Mortgage' Exhibit 'A', to which sale and assumption of mortgage the said mortgagees gave their express conformity; * * *

"(7) That on December 16, 1941, Eulogio Rodriguez, Sr., with the consent of the said mortgagees and by a document entitled 'Deed of assignment with Assumption of Mortgage' assigned his rights, title and interest in and to the said property to the defendant Luzon Surety Co., Inc., for the sum of Forty-two thousand five hundred fifty-six and 21/100 (P42,556.21) pesos, together with his obligations under the 'Deed of Sale with Assumption of Mortgage,' Exhibit B, which were duly assumed by the Luzon Surety Co., Inc., with the express stipulation, however, that Eulogio Rodriguez, Sr., was not relieved of the said obligations and that he, together with the Luzon Surety Co., Inc., were jointly and severally liable to the said mortgagees for the obligations under the said mortgage, * * *.

"(9) That during the Japanese occupation, to wit, in or about July, 1943, the defendant Eulogio Rodriguez, Sr., and the Luzon Surety Co., Inc., without paying any sum to the said mortgagees, and without the latter's knowledge or consent, unlawfully secured from the Japanese Military Administration and from the defendant

Mariano Villanueva, who was then purporting to act as Register of Deeds of the City of Manila under the Philippine Republic, a purported cancellation of the mortgage Exhibit A, which purported cancellation was on July 30, 1943, unlawfully annotated on the back of said transfer certificate of title No. 63345 as document No. 709-710/63345, but not on the mortgagee's copy, and without the prior' cancellation or surrender of said mortgagee's copy of transfer certificate of title No. 63345." (Record on appeal of the defendants, pp. 4-7.)

The defendants admitted in their amended answer the facts alleged in the above quoted paragraphs 4, 6, 7 of the complaint, and in connection with paragraphs 5 and 9 the defendants alleged that, during the Japanese occupation, the Department of Enemy Property established by the Japanese Military Administration in the City of Manila required the defendants to pay to said department the debt due from them to the plaintiffs, who were considered as enemy nationals. In view of the fact that one of the plaintiffs, Allison J. Gibbs, to whom the defendant Luzon Surety Co., communicated the said demand, answered that they could not do anything to avoid its compliance, the defendants had to obtain from the Philippine National Bank a loan of P120,000 they needed to pay, and in fact had paid, to the Department of Enemy Property the sum of P202,500 which they owed then to the plaintiffs. The Director of the Department of Enemy Property of the Japanese Military Administration had issued a receipt and a deed of cancellation of the mortgage credit of the plaintiffs, and the register of deeds on July 30, 1943, cancelled the mortgage annotated on the back of the transfer certificate title of the property mortgaged.

On September 25, the plaintiff filed a motion to strike the defense set up in the defendant's answer to the effect that they had paid their obligation to the plaintiff to the Department of Enemy Property of the Japanese Military Administration, on the ground that the latter had no authority to demand and accept such payment.

Before the date set for the hearing of the motion to strike the defendant's defense on September 29, 1945, the defendant had filed on September 26, 1945, a motion for summary judgment under section 2, Rule 36, attaching to the motion in support thereof an affidavit of the attorney for the Luzon Surety, Inc., Atty. Arturo Tolentino, to the effect that on July 21, 1943, when the, department of Enemy Property, Japanese Military Administration, ordered the Luzon Surety Co., to pay to said Department the defendant's mortgage debt of P202,500 to the plaintiffs, he went to see the plaintiff Allison J. Gibbs at the compound of the Holy Ghost College and asked him his advise "as to what action the company should take on the matter, and Attorney Gibbs told him that he cannot do anything and that he understood the situation of Luzon Surety Inc., and he stated further that in that event the credit will be considered as a war damage." Attached to the motion for summary judgment was also an affidavit of defendant Eulogio Rodriguez which states that, in view of the demand of payment made by the Department of Enemy Property, Japanese Military Administration, the defendants had to secure a loan of P120,000 from the Philippine National Bank and pay to said department on July 31, 1943, the sum of P202,500 due from them to the plaintiffs.

The motion to strike as well as the motion for summary judgment was not acted on by the court until the date set for trial of the case on the merits when both parties, without presenting any evidence, filed their respective memoranda and submitted the case to the lower court for decision.

The plaintiffs did not serve any opposing affidavit under section 3, Rule 36, to contradict the affidavit of Eulogio Rodriguez to the effect that payment of the mortgage debt in question was made to the Japanese Military Administration, attached to and in support of the motion for summary judgment for the defendants, and they admit, in paragraph 9 of their complaint, that the defendants secured from the Japanese Military Administration and the defendant register of deeds the purported cancellation of the mortgage Exhibit A and, consequently, the payment of the mortgage debt by necessary implication. These facts belie the assertion of the appellees that there is no basis for the lower court's assumption that such payment was made, and therefore the lower court was right in stating in its decision the following:

"Sin estar resueltas las citadas petici6n de descarte y de sentencia sumaria, las partes, en inteligencia con el Juzgado y a fin de terminarse definitivamente con el asunto en esta instancia, tuvieron a bien que al mismo fuese sometido, en su fondo, previa practica de sus respectivas pruebas. Se sefialo la causa para su vista en el fondo pero en el dia sefialado los demandantes se limitaron a presentar los Exhibits A, B y C, unidos a la demanda, los cuales fueron admitidos sin oposicion, y los demandados sometieron el asunto para su fallo sin practicar prueba algima. De modo que el asunto fue practicamente sometido a una sentencia de acuerdo con los escritos de alegaciones unicamente. (Record on Appeal of the defendants, p. 78.)

"El punto principal y decisivo planteado por las alegaciones de las partes es el de si, es o no, legal y valido el pago hecho por los demandados al custodio Japones....

"Tratandose aqui de un credito privado de que se ha incautado el beligerente ocupante japones durante la pasada guerra, este caso tiene similaridad al de 'Hongkong & Shanghai Banking Corporation contra Luis Perez Samanillo, Inc., et al., causa civil No. 71009' de este Juzgado. En esta ultima causa se ha discutido extensamente la legalidad o ilegalidad de los actos del invasor al incautarse de un credito privado y disponer de ello. En la decision de dicha causa, este Juzgado hizo las consideraciones y conclusiones que a continuation se acotan y se hacen parte de eflta decision por ser perfectamento aplicables al punto que se discute;"

The lower court declared invalid the payment made by the defendants to the Bureau of Enemy Property, and null and void the cancellation of the mortgage by the register of deeds, and sentenced the defendant to pay to the plaintiff, as soon as the moratorium is lifted, the balance due from the former to the latter, and the defendants appealed from said judgment to this Court.

The lower court was correct in holding that the question raised in the present case is similar to that involved in the case of Hongkong & Shanghai Banking Corporation vs. Luis Perez Samanillo, Inc., et al., (82 Phil., p. 851, and in making the reasons and conclusions set forth in support of its decision therein as grounds for its decision in the present case. In Samanillo case, the debt due from the defendant to the plaintiff was paid, by order of the Japanese Military Administration, to the Bank of Taiwan as Liquidator of local enemy banks and Bureau of Enemy Property of the enemy banks' properties. In the present case the defendants, by order of the Japanese Military Administration, paid to the Bank of Taiwan as Bureau of Enemy Property the debt due from the defendants to the plaintiffs. The question involved in said Samanillo case was whether or not the collection of Samanillo's debt to the Hongkong and Shanghai Banking Corporation by the Bureau of Enemy Property of the Japanese Military Administration, was a confiscation of the plaintiffs' credit. And the question involved in the instant case is whether or not the collection by the Department of Enemy Property, Japanese Military Administration, of the mortgage debt due from the defendants to the plaintiffs was a confiscation of the latter's credit.

This Court reversed the decision of the lower court in the case of Hongkong and Shanghai Banking Corporation vs. Luis Perez Samanillo, Inc., et al., on the strength of the ruling of this Court in the case of Haw Pia vs. China Banking Corporation, (80 Phil 604), in which the facts arid law involved were similar to those in Haw Pia. In this last case we held that the collection by the Bank of Taiwan of the China Banking Corporation's Credit from the latter's debtor by order of the Japanese Military Administration, was not a confiscation but a sequestration of the enemy private personal property, and therefore the payment by the plaintiff Haw Pia to the Bank of Taiwan was valid and released plaintiff's obligation to the defendant bank. Therefore, we have to reverse also the decision of the lower court in the present case.

The plaintiff's contention that the debt of the defendants in the present case was payable in dollars or its equivalent in Philippine peso at the option of the plaintiffs is immaterial, because both the Philippine pesos and American dollars at the rate of one dollar for two pesos were then legal tender in the Philippines according to section 1612 of the Revised Administrative Code, and for that reason the lower court sentenced the defendants to pay the plaintiffs in dollars or its equivalent in Philippine pesos. Besides we have held in the case of Haw Pia the

following:

"But be that as it may, whatever might have been the intrinsic or extrinsic worth of the Japanese war notes which the Bank of , Taiwan has received as full satisfaction of the obligations of the appellee's debtors to it, is of no consequence in the present case. As we have already stated, the Japanese war-notes were issued as legal tender at par with the Philippine peso, and guaranteed by Japanese Government 'which takes full responsibility for their usage having the correct amount to back them up (Proclamation of January .3, 1942). Now that the outcome of the war has turned against Japan, the enemy banks have the right to demand from Japan, through their States or Government, payments or compensation in Philippine pesos or U. S. dollars as the case may be, for the loss or damage inflicted on the property by the emergency war measure taken by the enemy. If Japan had won the war or were the victor, the property or money; of said banks sequestered or impounded by her might be retained by, Japan and credited to the respective State of which the owners of said banks were nationals, as a payment on account of the sums payable by them as indemnity under the treaties, and the said owners were to look for compensation in Philippine pesos or U. S. dollars to their respective States. (Treaty of Versailles and other peace treaties entered at the close of the first World War; VI Hackworth Digest of International Law, p. 232.) And if they cannot get any or sufficient compensation either from the enemy or from their States, because of their insolvency or impossibility to pay, they have naturally to suffer, as everybody else, the losses incident to all wars."

In view of the foregoing, the decision appealed from is reversed and the plaintiffs' action is dismissed.

Moran, C.J., Paras, Bengzon, Montemayor, and Reyes, JJ., concur.

PERFECTO, J.:

Except the pronouncement about legal tender, upon which we wish not to commit ourselves, we concur in the above opinion.

DISSENTING

TUASON, J.:

I dissent on the same general principles and reasons stated in Mr. Justice Hilado's dissenting opinion in *Haw Pia vs. China Banking Corporation*, G. R. No. L-554, and in my dissenting opinion in *Philippine Trust Company vs. Araneta*, G. R. No. L-2734.

RESOLUTION

December 21, 1950

FERIA, J.:

This is a motion for reconsideration of the decision of this Court in the present case filed by the plaintiffs on the grounds (I) that "even if it is assumed that the Japanese had authority to demand payment of plaintiffs' U. S. dollar credit in Japanese military pesos, the payments allegedly made by the defendants to the Japanese should be credited against the amount owed to plaintiffs only at the express mortgage rate, namely, at the cost in Japanese military pesos (or at the fair rate of exchange) of the U. S. dollar demand draft on New York called for in the mortgage; this would leave a balance due plaintiffs after such application of not less than \$40,024.07"; and (II) that the decision of this Court in the *Haw Pia* case on the strength of which the present case has been decided, is

erroneous, and in support of the petitioners' contention our attention is invited to an article appearing in the June 1949 issue of the Philippine Law Journal written by Professor Charles Cheney Hyde, author of "International Law as chiefly interpreted and applied by the United States."

I

As to the first ground, suffice it to say that if the Japanese military occupant had power to sequester and, in fact, sequestered the plaintiffs' credit, it had subrogated into the rights or stood in the shoes of the plaintiffs as creditor and, therefore, had the right to demand and accept, through Japanese Enemy Property Custodian, the payment of all the defendants' debts to the plaintiffs in Japanese military notes without of course compelling the defendants to pay interests not yet then due, and completely release thereby said obligation, without prejudice to the plaintiffs' right to demand, through their government from the Japanese after the war, the reimbursement of the full value of their sequestered credit. We have held in the decision that whatever might have been the intrinsic or extrinsic value of the Japanese war-notes which the Bank of Taiwan has received as full satisfaction of the obligation of the appellee's debtors to it, is of no consequence in the present case. As we have already stated, the Japanese war-notes were issued as legal tender at par with the Philippine peso, and guaranteed by Japanese Government which "takes full responsibility for their usage having the correct amount to back them up" (Proclamation of Jan. 3, 1942). Now that the outcome of the war has turned against Japan, the enemy banks have the right to demand from Japan, through their States or Government, payments or compensation in Philippine peso or U. S. dollars as the case may be, for the loss or damage inflicted on the property by the emergency war measure taken by the enemy.

Furthermore, when the Court of First Instance of Manila rendered judgment sentencing the defendants in the present case to pay their debt to the plaintiffs, after the moratorium has been lifted, in American dollars or its equivalent in Philippine pesos which, according to said Section 1612 of the Revised Administrative Code, was at the rate of two Philippine pesos to one American dollar, the plaintiffs did not appeal from said part of the judgment nor assail it as erroneous in their briefs, and therefore plaintiffs can not now raise that question for the first time in their motion for reconsideration.

The decision of this Court in the Legarda case did not hold that the defendant Burke had the right to refuse the payment by the debtor of his debt in British currency in Japanese war notes. This Supreme Court returned the case to the lower court for further proceeding and the writer of the opinion of the court in said case only said that "still it is serious question whether the defendant Burke who was a special creditor having the right to insist upon his option to receive payment in British currency or the equivalent of British currency at that time, could be enjoined to receive Japanese money specially at par." Moreover in the Legarda case the action was instituted by the debtor against his creditor to compel the latter to accept the payment in Japanese military notes, while in the present the payment of the debtors' debt to their creditors was demanded and accepted by the Japanese military Occupant in the exercise of its power to sequester the property of said creditors who were enemy citizens, without prejudice to the right of the latter to demand from the Japanese Government full compensation for the seizure through State Department channels at the peace table. (*United States v. SS. White Dental Manufacturing Co.*, 247 U. S. 398, 402 (1927).

II

With respect to the article of Professor Charles Cheney Hyde on the decision of this Court in the case of *Haw Pia v. China Banking Corporation*,^[1] G. R. No. L-554, promulgated on April 9, 1948, it may not be amiss to state, by way of a preamble before proceeding, that according to Article 38 of the Statutes of the International Court of Justice, the Court shall, subject to certain limitations, apply judicial decisions as a subsidiary means for the

determination of rules of International Law. Although courts are not organs of the State for expressing in a binding manner its views on foreign affairs, they are nevertheless organs of the State giving, as a rule, impartial expression to what is believed to be International Law. For this reason, judgments of municipal tribunals are of considerable practical importance for determining what is the right rule of International Law. This is now being increasingly recognized, and periodical unofficial collections of decisions of both international and municipal courts are being published. In pleadings before international tribunals litigants still fortify their arguments by reference to writings of international jurists, but with the growth of international judicial activity and of the practice of States evidenced by widely accessible records and reports, it is natural that reliance on the authority of writers as evidence of International Law should tend to diminish. For it is as evidence of the law and not as a law-creating factor that the usefulness of teachings of writers has been occasionally admitted in judicial pronouncements. But inasmuch as a source of law is conceived as a factor influencing the judge in rendering his decision, the work of writers may continue to play a part in proportion to its intrinsic scientific value, its impartiality and its determination to scrutinize critically the practice of States by reference to legal principle. (International Law by Oppenheim, Vol. I, pp. 29-32).

It does not seem, therefore, proper for an attorney or jurist, in trying to protect or defend the interest of parties affected adversely by a decision rendered by the Supreme Court of a Sovereign Foreign Power, to assail it with arguments premised on facts different from those found by their court on which the decision is based and dub that decision as one in violation of International Law. A decision of the Supreme Court of the small Republic of the Philippines is as much a source of International Law as a decision of the Supreme Court of the great Republic of the United States of America. The article of Professor Hyde in which the author, commenting on the decision in the *Haw Pia* case, says that it "will do the utmost harm to American Interest"[*], does not deserve the same weight as his opinions set forth in his work "International Law chiefly as interpreted and applied by the United States." Because the article was written and published more than one year after our decision, not by an impartial jurist and *ante litem motam*, but by an attorney who tries to defend American interests in the Philippines after an action was instituted in the Supreme Court of the State of New York by the *Compania Tabacalera*, a corporation owned mostly by Spaniards and doing business in these Islands, against the National City Bank of New York, an action based on the decision of this Supreme Court of the Philippines in the said *Haw Pia* case.

For clarity's sake, we shall discuss separately the arguments and conclusions advanced by Mr. Hyde in support of his contention that our decision in the *Haw Pia* case is a violation of International Law: (1) first, on the validity of the payment made in war notes to the Bank of Taiwan by *Haw Pia* of his pre-war debt to the China Bank; (2) secondly, on the alleged failure of the Bank of Taiwan, liquidator of the China Banking Corporation, to properly and adequately perform its function as such; (3) and thirdly, on the so-called failure of the Philippine Republic to heed certain contractual undertaking in the Inter-Allied Declaration of January 5, 1943, in London, to which the late President Quezon adhered in behalf of the Commonwealth of the Philippines. We shall copy the pertinent parts of the article dealing with each of those subjects, and then refute Mr. Hyde's contentions by transcribing the corresponding portion of our decision in said *Haw Pia* case plus some additional comments.

(1) As to the first, Professor Hyde has evidently missed the point with respect to the main issue decided in the *Haw Pia* case in the article in question, and consequently his conclusions are incorrect from the beginning to the end for they are based on wrong premises. At the beginning he says, among others, the following:

"The decision of the Supreme Court of the Philippine Republic in the *Haw Pia* case constitutes internationally illegal conduct upon the part of the Philippine Government which is productive of a solid claim for compensation in behalf of alien nationals or creditors who suffered loss as a direct consequence of such decision. The Japanese decrees which permitted *Haw Pia*, a local debtor, fully to satisfy her pre-war peso indebtedness to the local office of a foreign creditor bank by payment in a greatly depreciated Japanese

military currency were in violation of International Law. They permitted the debtor to satisfy her debt in a currency not contemplated by the parties and of little or no value at the time of payment. By such payment a mortgage of property given to secure such debt was satisfied of record. The recognition by the Supreme Court of the Philippines of the Japanese decrees which resulted in this harm-producing act is also a violation of International Law by such court.

"This decision will do the utmost harm to American interests in the Philippines unless remedied by Philippine legislation or some kindred process.

"In the Haw Pia case there has been confusion of thought manifested in various quarters due in part to failure to observe all the relevant facts in the case, to failure also to observe the character of the practice that has grown up in relation to the privileges of a belligerent occupant especially in relation to uses of legal tender, and to failure to observe the nature of certain acts on the part of the Japanese agency or so-called liquidator in the present case, and finally, to observe the failure of the Philippine Republic to heed certain contractual undertakings which it has accepted. * * *.

"In a word, various aspects of the case have been dealt with by the courts and commentators in a fantastic way that might be called old-fashioned, because of failure to seek light on what state practices ordained, and because ignorance thereof served to bolster up conclusions that could not have been reached if faithful and penetrating studies of that practice had been made. Again, loose treatment of some secondary materials has pointed to neglectful and superficial work. Thus, for example, the views of this writer have more than once been quoted or cited as indicating the rights of a belligerent occupant as such when those views had reference to a different matter, and notably to what a belligerent State might do with respect to alien enemy property found within its own domain. Much more important, 'no question has been raised as to the value of the money paid.'

"We now come to the question whether a belligerent occupant has the right through such uses of a depressed currency, by making it legal tender and continuing it as such, to oblige a creditor to accept in payment of a debt something that was at the time of payment practically or almost worthless. As has been suggested above, there is no evidence manifested by any practices that have been seen which indicates that occupying powers (other than Japan) have sought by causing a depressed currency to be legal tender, to oblige a creditor to accept in payment of a debt something that was of little value. The scope of the occupant's right depends upon the degree of harm wrought to the creditor by the occupant's decrees.

"In a word, the practice which has developed shows a significant and complete abstention from such conduct on the part of occupants and also vigorous and successful restrictions from foreign offended States when it was attempted. In general the abstention and the correction of abuses may be regarded as establishing a general rule of International Law forbidding the occupant to make it possible for the debtor to rob his creditors by the satisfaction of a debt through a greatly depreciated and practically worthless currency. Indeed what has taken place amounts to an impressive practice reflecting the creation or acknowledgment of a prohibitive rule of International Law. The general tenor of the Hague Regulations of 1907 is in complete harmony with this limitation of the right of the occupant as thus set forth. Or, to, express it differently, those Regulations call for the limitation.. * * *" (Philippine Law Journal, Vol. XXIV, June, 1949, pp. 141, 142, 144-145).

Professor Hyde has missed the point, because the question involved and decided in the Haw Pia case was not the validity of the Japanese decrees permitting a local debtor to satisfy fully his pre-war peso indebtedness to the local office of a foreign creditor bank by payment in a greatly depreciated military currency, but the power of the Japanese Military Administration to order validly the liquidation or winding up of the defendant China Banking Corporation, considered as a hostile bank, by the Bank of Taiwan appointed as the liquidator, and authorized to demand and accept the payment by the debtors of the defendant bank in order to sequester the latter's assets. And the ruling in the Haw Pia case has been applied to the present case, as well as to the cases of Hongkong &

Shanghai Banking Corporation vs. Luis Perez Samanillo,[1] G. R. No. L-1345, and Everret Steamship Corporation vs. Bank of the Philippine Islands, G. R. No. L-1729, because in these three cases the Japanese Military Administration required the debtors to pay to the Bank of Taiwan, as depositary of the Bureau of Enemy Property Custody or Alien Property Custodian, their debts to their creditors who were alien enemies, in order to sequester, not confiscate, the properties of the enemy aliens during the war, sequestration permitted and not prohibited by International Law or the Hague Regulations.

In our decisions in the *Haw Pia* case we held, among others, the following:

"The appellant's assignments of error may be reduced to two, to wit: First, whether or not the Japanese Military Administration had authority to order the liquidation or winding up of the business of defendant-appellee China Banking Corporation, and to appoint the Bank of Taiwan liquidator authorized as such to accept the payment by the plaintiff-appellant's debt to said defendant-appellee, and second, whether or not such payment by the plaintiff-appellant has extinguished her obligation to said defendant-appellee.

"As to the first question, we are of the considered opinion, and therefore hold, that the Japanese military authorities had power, under the international law, to order the liquidation of the China Banking Corporation and to appoint and authorize the Bank of Taiwan as liquidator to accept the payment in question, because such liquidation is not a confiscation of the properties of the bank appellee, but a mere sequestration of its assets which required the liquidation or winding up of the business of said bank. All the arguments to the contrary in support of the decision appealed from are predicated upon the erroneous assumption that the liquidation or winding up of the affairs of the China Banking Corporation in order to determine its liabilities and not assets to be sequestered or controlled was an act of confiscation or appropriation of private property contrary to article 46, section III of the Hague Regulations of 1907.

"Before the Hague Convention, it was the usage or practice to allow, or permit the confiscation or appropriation by the belligerent occupant not only of public but also of private property of the enemy in a territory occupied by the belligerent hostile army; and as such usage or practice was allowed, a fortiori, any other act short of confiscation was necessarily permitted. Section III of the Hague Regulations only prohibits the confiscation of private property by order of the Military authorities (art. 46), and pillage or stealing and thievery thereof by individuals (art. 47); and as regards public property, article 53 provides that cash funds, and property liable to requisition and all other movable property belonging to the State susceptible of military use or operation, may be confiscated or taken possession of as a booty and utilized for the benefit of the invader's government (II Oppenheim, 8th ed., sections 137; 320 and 321, War Department; Rasic Field Manual, Rules of Land Warfare F M 27-10). The belligerents in their effort to control enemy property within their jurisdiction or in territories occupied by their armed forces in order to avoid their use in aid of the enemy and to increase their own resources, after the Hague Convention and specially during the first World War, had to resort to such measures of prevention which do not amount to a straight confiscation, as freezing, blocking, placing under custody and sequestering the enemy private property. Such acts are recognized as not repugnant to the provisions of article 46 or any other articles of the Hague Regulations by well known writers on International Law, and are authorized in the Army and Navy Manual of Military Government and Civil Affairs not only of the United States, but also in similar manuals of Army and Navy of other civilized countries.

"Hyde in his International Law as chiefly interpreted and applied by the United States, Vol. 3, 6th ed., p. 1727, has the following to say:

'In examining the efforts of a belligerent to control in various ways property within its domain that has such a connection with nationals of the enemy that it may be fairly regarded as enemy property, it is important to inquire whether the attempt is made to appropriate property without compensation, divesting him not only of title, but also of any right or interest in what is taken, without prospect of reimbursement, or whether those efforts constitute an assumption of control which, regardless of any transfer of title, is not designed to produce such a deprivation. The character of the belligerent acts in the two situations is not identical. To refer to both as

confiscatory is not productive of clearness of thought, unless a loose and broad signification be attached to the term 'confiscation.' The point to be noted is that a belligerent may in fact deprive an alien enemy owner of property by process that are not essentially confiscatory, even though the taking and retention may cause him severe loss and hardship. Recourse to such non-confiscatory retentions or deprivations has marked the conduct of belligerents since the beginning of the World War in 1914. They may perhaps be appropriately referred to as a sequestration. * * *

'A belligerent may fairly endeavor to prevent enemy property of any kind within its territory (or elsewhere within its reach) from being so employed as to afford direct military aid to its foe. Measures of prevention may, in a particular case, assume a confiscatory aspect. In such a situation the question may arise whether those measures are, nevertheless, excusable. It is believed that they may be, and that they are not invariably unlawful despite the absence of efforts to compensate the owners.' (Italics ours)

And Oppenheim in his *International Law*, Vol. 2, 6th ed., by Lauterpacht, says:

'But the desire to eliminate the financial and commercial influence of the enemy, and other motives, presently led in most States to exceptional war measures against the businesses and property of enemies, which, though not confiscation, inflicted great loss and injury. Sometimes these measures stopped short of divesting the enemy ownership of the property; but in other cases the businesses or property were liquidated, and were represented at the close of hostilities by nothing else than the proceeds of their realization, often enough out of all proportion to their value. In the Trading with the Enemy Act, 1939, provisions were made for the appointment of custodians of enemy property in order to prevent the payment of money to enemies and to preserve enemy property in contemplation of arrangements to be made at the conclusion of peace.'

"Ernest K. Feilchenfeld in his 'The International Economic Law of Belligerent Occupation (1942)' supports the foregoing conclusion of Hyde, when he says that 'According to article 46 of the Hague Regulations, private property must be respected and cannot be confiscated. This rule affords protection against the laws of property, through outright confiscation, but not against losses under lawful requisition, contribution, seizure, fines, taxes, and expropriation' (Par. 208, p. 51). And later on he adds 'A complete nationalization of a corporation for the benefit of the occupant could not be anything but a permanent measure involving final effects beyond the duration of the occupation. There is no military need for it because the same practical results can be achieved by temporary sequestration,' (par. 385, p. 107).

"Martin Domke[*] in his *Trading with the Enemy in World War II*, pp. 4 and 5, speaking of Warfare on Economic and military fronts, says that 'Freezing Control is but one phase of the present war effort; it is but one weapon on the total war which is now being waged on both economic and military fronts. Coupled with Freezing Control as a part of this nation's program of economic warfare are to be found export control, the promulgation of a Black List, censorship, seizure of enemy-owned property, and financial and lend-lease aid to allied and friendly nations. * * *.

The sequestration or liquidation of enemy banks in occupied territories is authorized expressly by the United States Army and Navy Manual of Military Government and Civil Affairs F. M. 2710 OPNAV 50-E-3, which, mandatory and controlling upon the theatre commanders of the U. S. forces in said territories, provides in its paragraph 12 the following:

'Functions of Civil Affairs Officers.—In the occupation of such territories for a considerable period of time, the civil affairs officers will in most cases be concerned with the following and other activities;

1. Money and Banking.—Closing, if necessary and guarding of banks, bank funds, safe deposit boxes, securities and records; providing interim banking and credit needs; liquidation; reorganization, and reopening of banks at appropriate times; * * *

The Civil Affairs Officers are concerned, that is, entrusted with the performance of the functions enumerated

above, when so directed by the Chief Commander of the occupant military forces.

Not only the United States Army and Navy Manual of Military Government and Civil Affairs but similar manuals of other countries authorize the liquidation of impounding of the assets of enemy banks or the freezing, blocking and impounding of enemy properties in the occupied hostile territories without violating article 46 or other articles of the Hague Regulations. They do not amount to an outright confiscation of private property, and were put into effect by the Allied Army in the occupied hostile territories in Europe.

On the other hand, the provisions of the Trading with the Enemy Acts enacted by the United States and almost all the principal nations since the first World War, including England, Germany, France, and other European countries, as well as Japan, confirms that the assets of enemy corporations, specially banks incorporated under the laws of the country at war with the occupant and doing business in the occupied territory, may be legally sequestered, and the business thereof wound up or liquidated. Such sequestration or seizure of properties is not an act for the confiscation of enemy property, but for the conservation of it, subject to further disposition by treaty between the belligerents at the end of the war. Section 12 of the Trading with the Enemy Act of the United States provides that 'after the end of the war any claim of enemy or ally of an enemy to any money or other property received and held by the Alien Custodian or deposited in the United States Treasury, shall be settled as Congress shall direct.'

The purpose of such sequestration is well expounded in the Annual Report of the Office of the Alien Custodian for a period from March 11, 1943, to June 30, 1943. 'In the absence of effective measures of control, enemy-owned property can be used to further the interest of the enemy and to impede our own war effort. All enemy-controlled assets can be used to finance propaganda, espionage, and sabotage in this country or in countries friendly to our cause. They can be used to acquire stocks of strategic materials and supplies * * * was to the enemy, they will be diverted from our own war effort.' (Haw Pia vs. China Banking Corporation, L-554, pp. 3-10, 12-13, Original Decision.)

As we have already said, from the decision above quoted it appears that the "question whether a belligerent occupant has the right through such uses of a depressed currency, by making it legal tender and continuing it as such to oblige a creditor to accept in payment of a debt something that was at the time of payment practically or almost worthless," which Professor Hyde discusses at length in his article, has no bearing on the question involved and decided in the Haw Pia case and, therefore, Professor Hyde's criticisms are predicated upon a wrong premise.

However, although the question of legal tender was only incidental to the issue in the Haw Pia case, we have shown in our decision that the power of a military occupant to issue military currency is based, not only on the military occupant's general power to maintain law and order recognized in article 43 of the Hague Regulations, but also on military necessity; and said power was exercised during the last World War not only by Germany who used in most occupied areas the Reichskreditkassa mark, a paper currency printed in Germany and denominated in German monetary units, but also by the Allies in the occupied enemy territory of Sicily, Germany and Austria. The Combined Directives of the Combined Chiefs of Staffs of the Supreme Allied Commander issued on June 24, 1943, April 28, 1944, and June 27, 1947, declared respectively as legal tender the yellow seal dollars currency and the British military notes (BMN) in Sicily, the Allied military mark and the yellow seal dollars in Germany, and the Allied military shillings in Austria. When the Japanese Military occupant issued the Proclamation of January 3, 1942, which declared the Japanese military notes of small denominations up to ten pesos as legal tender at par with the Philippine peso, the purchasing power of said notes was then the same as that of the Philippine peso. If the Japanese war notes became depressed and valueless, it was because the war was prolonged and lost by the Japanese contrary to their expectation of winning the war in a short time, and not because they issued purposely a

depressed and valueless currency as legal tender. If their expectation had been realized no question as to the validity of the Japanese military notes as legal tender would have come up.

There was no Japanese order or decree or any particular case in which the Japanese military occupant or agents had actually compelled all creditors to accept in payment of pre-war debts depressed currency or Japanese war notes; as a matter of fact several cases are still pending in our courts in which debtors of pre-war debts had to file civil actions to compel their creditors to accept Japanese war notes deposited by them in court in payment of pre-war obligations which became due and payable during the occupation. What the Japanese military occupant did in the *Haw Pia* case was to issue Administrative Ordinance No. 1, dated July 31, 1942, ordering the liquidation of the seven banks of hostile countries, among them the defendant China Banking Corporation, appointing the Bank of Taiwan, Ltd. as liquidator of said banks and demanding the payments of all loans, advances and other receivables of the banks which were thereby declared due and payable notwithstanding the terms and conditions of the contract, in order to sequester the latter's assets during the war; and in the present case as well as the *Perez Samanillo* and *Everret* cases the Japanese Military Administration ordered the debtors to pay to the Japanese Enemy Property Custodian or Bank of Taiwan their debts due to their creditors who were enemy aliens or corporations, in order to sequester the money so paid. Of course the medium of payment, being a currency declared legal tender by the same Japanese military occupant, had to be accepted by the Bank of Taiwan, an agent of the latter, for it would have been the height of folly and an absurdity for the Bank of Taiwan to refuse to accept them; for even if they were valueless the enemy creditors would not legally suffer any loss thereby, because under International Law the Japanese military authorities were responsible after the war to pay said creditors full compensation for such sequestration through their respective governments at the conference table, regardless of the intrinsic or extrinsic value of the money accepted by them. As we have stated in this connection in our decision "But be that as it may, whatever might have been the intrinsic or extrinsic value of the Japanese war-notes which the Bank of Taiwan has received as full satisfaction of the obligation of the appellee's debtors to it, is of no consequence in the present case."

As we have already stated, the Japanese war-notes were issued as legal tender at par with the Philippine peso, and guaranteed by Japanese Government 'which takes full responsibility for their usage having the correct amount to back them up (Proclamation of Jan. 3, 1942). Now that the outcome of the war has turned against Japan, the enemy banks have the right to demand from Japan, through their States or Government, payments or compensation in Philippine peso or U. S. dollars as the case may be, for the loss or damage inflicted on the property by the emergency war measure taken by the enemy. If Japan had won the war or were the victor, the property or money of said banks sequestered or impounded by her might be retained by Japan and credited to the respective State of which the owners of said banks "were nationals, as a payment on account of the sums payable, by them as indemnity under the treaties, and the said, owners were to look for compensation to their respective States' (VI Backworth Digest of International Law, p. 232; 2 Oppenheim, 6th ed. by Lauterpacht, page 263).

We have quoted once the view of Professor Hyde on the assumption that Professor Hyde would not give the words "domain or territory," wherein private property of enemy nationals may be sequestered under the Trading with the Enemy Act, an interpretation he seems to give now in his article, different from that of the other writers and authorities we have also quoted and specially of the Executive Department of the United States Government which we shall hereinafter quote, in order to show that if the United States as well as the other Allied countries applied and enforced during the last world war their Trading with the Enemy Act in any territory occupied by their armed forces, as we have shown in our decision, Japan had also the right to do the same in the Philippines by virtue of the international law principle that "what is permitted to one belligerent is also allowed to the other."

An agency of the Executive Branch of the United States Government, i.e., the Alien Property Custodian, in

March, 1944 recognized the validity of the liquidation by the Japanese military authorities of branches of the National City Bank of New York situated in Japan, Korea and in territory occupied by the Japanese military forces, namely Tokyo, Dairen and Harbin. The Custodian expressly held that payments made by debtors of said branch banks to the Japanese liquidator, namely, the Yokohama Specie Bank, appointed under the Japanese Enemy Assets Control Law (December 22, 1941), constituted valid payment of such debts to the branch banks. The authority for the appointment of the Yokohama Specie Bank, Limited, as such liquidator was identical with that for the appointment of the Bank of Taiwan as liquidator of China Banking Corporation plaintiff in the Haw Pia case.

This determination was made in the proceedings for the liquidation of the New York Branch of the Yokohama Specie Bank conducted by the Superintendent of Banks of the State of New York under the supervision of the United States Alien Property Custodian, and was based upon an opinion of the General Counsel to the Alien Property Custodian, dated March 14, 1944, in which the said General Counsel held in part as follows:

There is in fact reason to believe that National City Bank has no cause of action against anyone. Article III of the Enemy Assets Control Law of Japan (December 22, 1941) provides:

'When a person liable for a debt to an enemy country, an enemy national, or others designated by the Order, performs to a person designated by the Government, the payment of money or the delivery of articles which are the object of the debt—it shall have discharged that obligation.'

By order of February 10, 1942, made pursuant to the Enemy Assets Control Law (December 22, 1941), Yokohama Specie Bank was entrusted by the Japanese government with the liquidation of National City Bank's branches in Japan and occupied territory, subject to no presently relevant exceptions. Upon appointment, Yokohama Specie Bank commenced the liquidation thereof. Information obtained from an officer of the Department of State, recently repatriated from Japan, indicates that liquidation of National City Bank, Japan, has proceeded in accordance with the law quoted above. It is a fair assumption that Yokohama Specie Bank, engaged in liquidating these branches in its capacity as administrator, collected from itself in its capacity as a commercial bank the moneys owing to National City Bank's foreign branches, and consequently that the Yokohama Specie Bank branches were, in accordance with the terms of Article III, *supra*, discharged of those obligations. The deposits of National City Bank branches in the Far Eastern branches of Yokohama Specie Bank are outside the jurisdiction of the United States, and the only liability that Yokohama Specie Bank incurred by its failure to pay was that which the Japanese law might impose. *Deutsche Bank Filiale Nurnberg v. Humphrey*, 272 U. S. 517, 520 (1926). By that law, payment of the deposits to the governmental administrator satisfied the debt owed by the depository. If the obligation was discharged by Japanese law, no right remains to be recognized in this country, except such as may be urged through State Department channels at the peace table. See *United States v. S. S. White Dental Mfg. Co.*, 274 U. S. (1927). As was said by Mr. Justice Holmes in an analogous case:

'* * * In any view of all that had happened the only obligations of the Wiener Bank-Verein were those imposed by the law of Austria-Hungary, and that if that law discharged the debt, the debt was discharged everywhere.' *Zimmerman v. Sutherland*, 274 U. S. 253, 256 (1927)."

The opinion proceeds to state that the sequestration in question was effected pursuant to valid and binding orders of the Japanese government and that recognition is given by the courts of the United States to the power of a belligerent to thus sequester property even when that power is exercised adversely to United States nationals. *United States v. White Dental Mfg. Co.*, 274 U. S. 398. The sequestration was held not to create any right in the National City Bank and to have imposed no liability on the Japanese Government except as may arise from subsequent treaties. As was said by Mr. Justice Stone:

"The sequestration of enemy property was within the rights of the German government as a belligerent power and when effected left the corporation without right to demand its release or compensation for its seizure, at least until the declaration of peace * * *.' United States v. S. S. White Dental Mfg. Co., 274 U. S. 398, 402 (1927)."

(2) Prof. Hyde discussing the second point says:

"In the present case the Bank of Taiwan is constantly referred to as the 'Liquidator' of the China Banking Corporation. This leads to the question whether it properly or adequately performed its function as liquidator. The liquidation of a corporation is synonymous with the winding up of the affairs of the corporation. There is no propex or complete liquidation in which debts to creditors are not settled and paid as well as assets reduced to a liquid state. In the present case, only about ten per cent of the deposits of foreign banks were allowed to be withdrawn. The conduct of the liquidator in the present case had also another significance. Its retention of money representing debts due by foreign banks to depositors served in fact to be a convenient means of preserving them so that they would be subjected to the dangers of inflation and deterioration of currency which the Japanese Government might later apply. This here was a process whereby the occupant held within its grip something which later by a method akin to confiscation it could ruin the value of, contrary to the injunctions of the Hague Regulations. Looked at in this way, the conduct of the liquidator as an agency of the Japanese Government together with the later action of that Government united jointly to facilitate and also effectuate the commission of an international wrong. That wrong was of a type which Articles 43 and 46 of The Hague Regulations of 1907 appeared to forbid.

A third conclusion is to be drawn from the same fact. There would be a discrimination against non-Filipinos not permissible pursuant to international law. Filipinos, axis nationals and neutrals were able to utilize the payments received by them at a time v.'hen they had value. The foreign banks on the other hand could not pay more than ten per cent of their deposits and remained indebted to their depositors in full.

The refusal of the liquidator, the Bank of Taiwan, twice to release the mortgage in the Haw Pia case stands out as a significant fact. Of course, it is possible that the liquidator received payment of 4,563,78 pesos made by the debtor in August 1944 merely for what it was worth. It may have been known to the liquidator at the time that Japanese military pesos of larger denominations than ten peso notes had not been made legal tender, or it may have doubted whether they had been tender. Hence the liquidator may have felt obliged, in case payment were made in such larger Japanese notes, not to regard them as adequate for the settlement of the debt. Or, the liquidator may have been influenced by the vastness and impropriety of the Japanese acts of inflation which if allowed to enable the debtor to pay her debt therewith, would have amounted to sheer robbery of the creditor, both violative of precedent and hurtful to the prestige of the Japanese Government. In a word, there are numerous reasons any one of which might have served to put the liquidator on its guard, and to cause it to leave the matter to its own later decision, he that as it may, it is a reasonable assumption that shrewed debtors ran to the windows of the Bank of Taiwan in the attempt to take advantage of the decrease of the value of the occupation currency, one peso of the Philippines being then equivalent to at least fifteen pesos of the military notes."

The liquidation ordered by the Japanese Administrative Ordinance No. 11 of July 31, 1942, was not a complete liquidation of all the affairs of the local banks controlled by enemy nationals, but only a liquidation of all the credits of said banks in order to liquidate and sequester them. Said Ordinance only provided that "2. The Bank of Taiwan Ltd. has been appointed liquidator of the above banks. 3. All loans, advances and other receivables of the banks are hereby declared due and payable notwithstanding the terms and conditions of the contract. Debtors are given from today until September 30, 1942, to pay the principal and interest of their obligations. All payments made thereafter shall be charged additional interest at 3 per cent per annum, except only in special case where they may be waived." For that reason the creditors or depositors of the banks were allowed to withdraw restricted amounts only from their deposits as a protective measure to prevent runs on banks owned or controlled by the

enemy nationals, which would result from mass withdrawals. And it is incorrect or contrary to facts to say, as Professor Hyde avers, that "only about ten per cent of the deposits of foreigners were allowed to be withdrawn". For what we have found in our decision in the *Haw Pia* case is the following:

"That the liquidation or winding up of the business of the China Banking Corporation and other enemy banks did not constitute a confiscation or appropriation of their properties or of the debts due them from their debtors, but a mere sequestration of their assets during the duration of the war for the purposes already stated, is evidenced conclusively by the following uncontroverted facts set forth in the briefs of both parties and amici curiae:

(1) Out of the sum of about P34,000.00 collected from the debtors by the liquidator Bank of Taiwan, the latter paid out to the depositors or creditors of the same Bank about P9,000,000; and it is common sense that this last amount should not have been desimbuysod or taken out of the said amount of about P34,000,000 had it been the intention of the Japanese Military Administration to confiscate this amount collected by the Bank of Taiwan."

As the enemy banks were closed and had not received deposits in Japanese Military notes during the occupation, they did not run the risk, as the other banks did, of being responsible for such deposits in genuine Philippine currency had not the Philippine Government declared after liberation such deposits to be of no value. The retention by the liquidator "of money representing debts due by foreign banks to depositors" did not, as Professor Hyde affirms, "serve in fact to be a convenient means of preserving them so that they would be subjected to the dangers of inflation and deterioration of currency which the Japanese Government might later apply." As all the payments made to the Bank of Taiwan in Japanese war notes of the credits of the enemy Banks, except about twenty-seven, not ten, percent paid by the liquidator to the Banks depositors, had been sequestered, said Banks could not have been subjected to the dangers of inflation or deterioration of currency; because, we have already stated above, the Japanese Government assumed the responsibility and is responsible for the payment, in terms of Philippine pesos or U. S. dollars, of the foreign Banks' credits they have collected and sequestered, and the Banks may demand the payment thereof through their respective Governments at the Peace Conference.

Although it is obviously immaterial whatever may have been the opinion of the legislator on the validity or adequacy of the currency paid by *Haw Pia* for the settlement of his debt, there is nothing in the record to show that the Bank of Taiwan refused or declined twice to release the mortgage in the *Haw Pia* case, as Professor Hyde affirms. What appeared in the record was that *Haw Pia* alleged in his complaint filed in August, 1945, that the defendants, referring to the China Banking Corporation because the Bank of Taiwan was only a nominal defendant and in 1945 was no longer doing business in the Philippines, refused and neglected to execute the deed of cancellation of mortgage of the property, and for that reason *Haw Pia* had filed that action against the China Banking Corporation. It is a fact, of which we have judicial notice, that the Bank of Taiwan had executed deeds of cancellation of mortgages for all payments received by it in payment of the Banks' and the enemy nationals' mortgage credits, and the plaintiffs in the present case of *Gibbs v. Rodriguez* and in the case of *Hongkong Shanghai Banking Corporation v. Perez Samanillo*, precisely demanded in their action the annulment of the deed of cancellation of the defendants' mortgages executed by the Bank of Taiwan.

(3) And, with respect to the so-called failure of the Philippine Republic to heed certain contractual undertaking in the Inter-Allied Declaration of January 5, 1943, Professor Hyde says in his article the following:

"We now come to an important contractual undertaking by the Philippine Republic. The Government of the Philippines undertook to invalidate all Japanese dealings by which property in which nationals of United Nations were interested was hurt by violations of rules of International Law. Evidence of this undertaking is seen in the "Inter-Allied Declaration Against Acts of Dispossession Committed in Territories under Enemy Occupation or Control (with covering Statement by His Majesty's Government in the United Kingdom and

Explanatory Memorandum issued by the Parties to the Declaration)", London, January 5, 1943, to which the Government of the Commonwealth of the Philippines adhered on January 19, 1943.

"It is not here contended that the Allied Nations contemplated on January 5, 1943 the consideration of payments made to Banks in the currency of the occupied European countries as invalid. The inflation in these countries had not progressed to a degree that such thoughts came to the minds of the signatories. It is here contended, however, that property is "dispossessed" within the meaning of the Inter-Allied Declaration where the degree of inflation is as great as that indicated in the figure in the table above given on page 155 of this document.

"If this be a correct statement, the governments participating in the agreement of January 5, 1943, found themselves legally obliged to reach a determination that debtors were not relieved from liability by payments of debts to occupation authorities, when through a larger inflation such payment would amount to practical robbery of the creditor for the benefit of the debtor.

"The Inter-Allied Declaration of January 5, 1943, in the light of the official interpretation given to it, has a direct bearing upon the obligation assumed by the Philippine Republic in the Haw Pia case. It is evidence of definite undertaking by the Republic to undo the consequences of acts mutually regarded as wrongful, and manifested in the inflationary conduct of Japan that was contemptuous of the rights of Alien creditors growing out of debts due them by Philippine debtors. Of direct consequence of the agreement was the obligation on the part of the Republic by some appropriate process to permit no local agency, judicial or other, to give effect to the Japanese decrees. * * * Thus, when the Supreme Court, through ignorance of what had taken place, or for any other reason, regarded as enforceable or valid the Japanese edicts, it made itself the means by which its own country violated an international obligation laid down by contract. * * *."

As we have already said, we have not determined in the Haw Pia case, contrary to Professor Hyde's erroneous assumption, that debtors were relieved from liability by payments in a greatly depreciated currency or Japanese war notes to the occupation authorities of the pre-war debts they owed to their creditors (national, neutral or enemy aliens).

What we have declared is that the Military Occupant had power to order the liquidation of the hostile banks, appoint the Bank of Taiwan as liquidator and sequester their assets, and that, therefore, the payment made by Haw Pia to the Bank of Taiwan of his pre-war debt to the China Banking Corporation was valid and extinguished his obligation to the latter; and for that reason this Court did not deem it necessary to discuss and pass upon the effect on said case of the adherence by the late President Quezon in behalf of the Commonwealth of the Philippines to the United Nations Declaration of January 5, 1943, in London. Because in said declaration the United Nations "stated their intention to do their utmost to defeat the methods of dispossession practiced by the Governments with which they are at war against the countries and people who have so wanton assaulted and despoiled" and "reserved all their rights to declare invalid, but did not actually invalidate, any transfers of, or dealing with, property, rights and interests of any description whatsoever" in the occupied territories which have taken "the form of open looting or plunder"; and we have held that the acts of the Japanese occupant involved in the Haw Pia case did not constitute a confiscation but a mere sequestration of private property, not in excess of those limited rights granted such occupant under International Law.

Besides, as the governments which were parties to that agreement did not bind themselves, but only reserved all their rights, to invalidate such acts, the Government of the Philippines did not exercise that reserve right [*] to declare invalid the payments made to the Bank of Taiwan by debtors of their debts to the enemy banks or nationals. On the contrary it enacted in 1945 Commonwealth Act No. 727 which provided that "payment on demand or tendered and accepted during the period of the Japanese invasion on obligation incurred or contracted prior to such period shall be considered valid." Although said Act was vetoed by President Truman on the

assumption that it was a currency statute and required his approval, it is obvious, without necessity of discussing whether or not said Act 727 was really a currency measure, that it was a declaration of the policy of the Legislative and Executive Departments of the Government.

Wherefore, we find both the first ground as well as the second ground of the motion for reconsideration based on Prefessor Charles Cheney Hyde's contentions submitted by the petitioners without merit, and deny said motion for reconsideration.

Moran, C. J., Paras, Pablo, Bengzon, Montemayor, A. Reyes, and Bautista Angelo, JJ., concur.

[1] 80 Phil., 604.

* Justice is a blind Goddess who administers the law regardless of the parties' station in life, color or race. The writer of the decision in the Haw Pia case was, before his appointment to the Supreme Court, a retained attorney for about twenty years of the China Banking Corporation against which the decision was rendered in favor of Haw Pia, a Chinaman.

[1] 82 Phil., 851, unreported.

* Mr. Martin Domke, a well-known authority on the matter, who was furnished with a copy of our decision in the Haw Pia case by a prominent attorney of Manila, in his letter to the latter of July 14, 1948, says among others: "Finally, the judgment of the Supreme Court of April 9th is of very high importance indeed. I believe the majority decision is right."

* The "Evening News," a daily newspaper, in its issue of May 25, 1948, published a news item by Mr. Jose P. Zaide a member of Evening News Staff and not denied by the proper authorities, which reads as follows: "British Minister Harry Linton Foulds in a diplomatic note to the foreign office early this months brought to the attention of the Philippine Government an ordinance approved by the Hongkong Government invalidating settlement of pre-war debts made during the occupation," which, Minister Foulds said, "is also applicable to interests of Philippine nationals and firms in Hongkong as a matter of reciprocity," but in view of our decision in the Haw Pia case promulgated on April 9, 1948, "the British envoy sought Philippine opinion in the possibility of reconciling the divergent legal view. The British inquiry was believed motivated by the desire to protest extensive British Banking interests in the Philippines, principally banking institutes. The oreign office in an answer transmitted to the British legation was reported to have stood pat on the ruling of this Supreme Court down in the Haw Pia case validating payment during the occupation."

DISSENTING

TUASON, J.:

I dissent from the majority opinion on the grounds stated in Mr. Justice Hilado's dissenting opinion, in which I joined, in *Haw Pia v. China Banking Corporation*, 45 Official Gazette Supp. No. 9, 229, and in my dissents in other allied cases.

Motion for reconsideration denied.

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