

## THE COLLECTOR OF INTERNAL REVENUE, PETITIONER VS. DOUGLAS FISHER AND BETTINA FISHER, AND THE COURT OF TAX APPEALS, RESPONDENTS.

*G.R. Nos. 11622 and 11668. January 28, 1961*

Ponente: BARRERA, J.

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### **BARRERA, J.:**

This case relates to the determination and settlement of the hereditary estate left by the deceased Walter G. Stevenson, and the laws applicable thereto.

Walter G. Stevenson, (born in the Philippines on August 9, 1874 of British parents and married in the City of Manila on January 23, 1909 to Beatrice Mauricia Stevenson, another British subject) died on February 22, 1951 in San Francisco, California, U.S.A., whereto he and his wife moved and established their permanent residence since May 10, 1945. In his will executed in San Francisco on May 22, 1947, and which was duly probated in the Superior Court of California on April 11, 1951, Stevenson instituted His wife Beatrice as his sole heiress to the following real and personal properties acquired by the spouses while residing in the Philippines, described and preliminarily assessed as follows:

#### Gross Estate

Real Property—2 parcels of land in Baguio, covered by T.C.T.  
Nos. 378 and 379

P43,500.00

#### Personal Property

(1) 177 shares of stock of Canacao Estate at P10.00 each

1,770.00

(2)

210,000 shares of stock of Mindanao Mother Lode Mines, Inc. at P0.38 per share

79,800.00

(3) Cash credit with Canacao Estate, Inc.

4,870.88

(4)

Cash with the Chartered Bank of India, Australia & China

851.97

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Total Gross Assets

P130,792.85

On May 22, 1951, ancillary administration proceedings were instituted in the Court of First Instance of Manila for the settlement of the estate in the Philippines. In due time, Stevenson's will was duly admitted to probate by our court and Ian Murray Scott was appointed ancillary administrator of the estate, who on July 11, 1951, filed a preliminary estate and inheritance tax return with the reservation of having the properties declared therein finally appraised at their values six months after the death of Stevenson. Preliminary return was made by the ancillary administrator in order to secure the waiver of the Collector of Internal Revenue on the inheritance tax due on the 210,000 shares of stock in the Mindanao Mother Lode Mines, Inc. which the estate then desired to dispose in the United States. Acting upon said return, the Collector of Internal Revenue accepted the valuation of the personal properties declared therein, but increased the appraisal of the two parcels of land located in Baguio City by fixing their fair market value in the amount of P52,200.00, instead of P43,500.00. After allowing the deductions claimed by the ancillary administrator for funeral expenses in the amount of P2,000.00 and for judicial and administration expenses in the sum of P5,500.00, the Collector assessed the estate the amount of P5,147.98 for estate tax and P10,875.25 for inheritance tax, or a total of P16,023.23. Both of these assessments were paid by the estate on June 6, 1952.

On September 27, 1952, the ancillary administrator filed an amended estate and inheritance tax return in pursuance of his reservation made at the time of filing of the preliminary return and for the purpose of availing of the right granted by section 91 of the National Internal Revenue Code.

In this amended return the valuation of the 210,000 shares of stock in the Mindanao Mother Lode Mines, Inc. was reduced from P0.38 per share, as originally declared to P0.20 per share, or from a total valuation of P9,800.00 to P42,000.00. This change in price per share of stock to P0.20 per share, or from a total valuation of P79,800.00 was based by the ancillary administrator on the market quotation of the stock obtaining at the San Francisco (California) Stock Exchange six months from the death of Stevenson, that is, as of August 22, 1951. In addition, the ancillary administrator made claim for the following deductions:

Funeral expenses (\$1,043.26)

P2,086.52

## Judicial Expenses:

(a)

Administrator's Fee

P1,204.34

(b) Attorney's Fee

6,000.00

(c) Judicial and administration expenses as of August 9, 1952

1,400.05

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8,604.39

Real Estate Tax for 1951 on Baguio real  
properties (O. R. No. B-1 686836)

652.50

Claims against the estate: (\$5,000.00) P10,000.00

P10,000.00

Plus: 4% int. p.a. from Feb. 2 to 22, 1951

22.47

10,022.47

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Sub-Total P21,365.88

In the meantime, on December 1, 1952, Beatrice Mauricia Stevenson assigned all her rights and interests in the estate to the spouses, Douglas and Bettina Fisher, respondents herein.

On September 7, 1953, the ancillary administrator filed a second amended estate and inheritance tax return (Exh. "M-N"). This return declared the same assets of the estate stated in the amended return of September 22, 1952, except that it contained new claims for additional exemption and deduction to wit: (1) deduction in the amount of P4,000.00 from the gross estate of the decedent as provided for in Section 861 (4) of the U.S. Federal Internal Revenue Code which the ancillary administrator averred was allowable by way of the reciprocity granted by Section 122 the National Internal Revenue Code, as then held by the Board of Tax Appeals in case No. 71 entitled "Housman vs. Collector", August 14, 1952; and 2 exemption from the imposition of estate and inheritance taxes on the 210,000 shares of stock in the Mindanao Mother Lode Mines, Inc. also pursuant to the reciprocity proviso of Section 122 of the National Internal Revenue Code. In this last return, the estate claimed that it was liable only for the amount of P525.34 for estate tax and P238.06 for Inheritance tax and that, as a consequence, it had overpaid the government. The refund of the amount of P15,259.83, allegedly overpaid, was accordingly requested by the estate. The Collector denied the claim. For this reason, action was commenced in the Court of First Instance of Manila by respondents, as assignees of Beatrice Mauricia Stevenson, for the recovery of said amount. Pursuant to Republic Act No. 1125, the case was forwarded to the Court of Tax Appeals which court, after hearing, rendered decision the dispositive portion of which reads as follows:

"In fine, we are of the opinion and so hold that: (a) the one-half (1/2) share of the surviving spouse in the conjugal partnership property as diminished by the obligations properly chargeable to such property should be deducted from the net estate of the deceased Walter G. Stevenson, pursuant to Section 89-C of the National Internal Revenue Code; (b) the intangible personal property belonging to the estate of said Stevenson is exempt from inheritance tax, pursuant to the proviso of section 122 of the National Internal Revenue Code in relation to the California Inheritance Tax Law but decedent's estate is not entitled to an exemption of P4,000.00 in the computation of the estate tax; (c) for purpose of estate and inheritance taxation the Baguio real estate of the spouses should be valued at P52,200.00, and the 210,000 shares of stock in the Mindanao Mother Lode Mines Inc. should be appraised at P0.38 per share; and (d) the estate shall be entitled to a deduction of P2,000.00 for funeral expenses and judicial expenses of P8,604.39."

From this decision, both parties appealed.

The Collector of Internal Revenue, hereinafter called petitioner, assigned four errors allegedly committed by the trial court, while the assignees, Douglas and Bettina Fisher, hereinafter called respondents, made six assignments of error. Together, the assigned errors raise the following main issues for resolution by this Court:

- (1) Whether or not, in determining the taxable net estate of the decedent, one-half (1/2) of the net estate should be deducted therefrom as the share of the surviving spouse in accordance with our law on conjugal partnership and in relation to section 89 (c) of the National Internal Revenue Code;
- (2) Whether or not the estate can avail itself of the reciprocity proviso embodied in Section 122 of the National Internal Revenue Code granting exemption from the payment of estate and inheritance taxes on the 210,000 shares of stock in the Mindanao Mother Code Mines, Inc.;
- (3) Whether or not the estate is entitled to the deduction of P4,000.00 allowed by Section 861, U.S. Internal Revenue Code, in relation to section 122 of the National Internal Revenue Code;
- (4) Whether or not the real estate properties of the decedent located in Baguio City and the 210,000 shares of stock in the Mindanao Mother Lode Mines, Inc., were correctly appraised by the lower court;
- (5) Whether or not the estate is entitled to the following deductions: P8,604.39 for judicial and administration expenses; P2,086.52 for funeral expenses; P652.50 for real estate taxes; and P10,022.47 representing the amount of indebtedness allegedly incurred by the decedent during his lifetimes and

(6) Whether or not the estate is entitled to the payment of interest on the amount it claims to have overpaid the government and to be refundable to it.

In deciding the first issue, the lower court applied well-known doctrine in our civil law that in the absence of any ante-nuptial agreement, the contracting parties are presumed to have adopted the system of conjugal partnership as to the properties acquired during their marriage. The application of this doctrine to the instant case is being disputed, however, by petitioner Collector of Internal Revenue, who contends that pursuant to Article 124 of the New Civil Code, the property relation of the spouses Stevensons ought not to be determined by the Philippine law, but by the national law of the decedent husband, in this case, the law of England. It is alleged by petitioner that English laws do not recognize legal partnership between spouses, and that what obtains in that jurisdiction is another regime of property relation, wherein all properties acquired during the marriage pertain and belong exclusively to the husband. In further support of his stand, petitioner cites Article 16 of the New Civil Code (Art. 10 of the old) to the effect that in testate and intestate proceedings, the amount of successional rights, among others, is to be determined by the national law of the decedent.

In this connection, let it be noted that since the marriage of the Stevensons in the Philippines took place in 1909, the applicable law is Article 1325 of the old Civil Code and not Article 124 of the New Civil Code which became effective only in 1950. It is true that both articles adhere to the so-called nationality theory of determining the property relation of spouses where one of them is a foreigner and they have made no prior agreement as to the administration, disposition, and ownership of their conjugal properties. In such a case, the national law of the husband becomes the dominant law in determining the property relation of the spouses. There is, however, a difference between the two articles in that Article 124[1] of the New Civil Code expressly provides that it shall be applicable regardless of whether the marriage was celebrated in the Philippines or abroad, while Article 1325[2] of the old Civil Code is limited to marriages contracted in a foreign land.

It must be noted, however, that what has just been said refers to mixed marriages between a Filipino citizen and a foreigner. In the instant case, both spouses are foreigners who married in the Philippines. Manresa,[3] in his Commentaries, has this to say on this point:

"La regla establecida en el art. 1.315, se refiere a las capitulaciones otorgadas en España y entre españoles. El 1.325, a las celebradas en el extranjero cuando alguno de los conyuges es español. En cuanto a la regla procedente cuando dos extranjeros se casan en España, o dos españoles en el extranjero, hay que atender en el primer caso a la legislación del país a que aquellos pertenezcan, y en el segundo, a las reglas generales consignadas en los artículos 9 y 10 de nuestro Código." (Italics supplied.)

If we adopt the view of Manresa, the law determinative of the property relation of the Stevensons, married in 1909, would be the English law even if the marriage was celebrated in the Philippines, both of them being foreigners. But, as correctly observed by the Tax Court, the pertinent English law that allegedly vests in the decedent husband full ownership of the properties acquired during the marriage has not been proven by petitioner. Except for a mere allegation in his answer, which is not sufficient, the record is bereft of any evidence as to what English law says on the matter. In the absence of proof, the Court is justified, therefore, in indulging in what Wharton calls "processual presumption", in presuming that the law of England on this matter is the same as our law.[4]

Nor do we believe petitioner can make use of Article 16 of the New Civil Code (art. 10, old Civil Code) to bolster his stand. A reading of Article 10 of the old Civil Code, which incidentally is the one applicable, shows that it does not encompass or contemplate to govern the question of property relation between spouses. Said article distinctly speaks of amount of successional rights and this term, in our opinion, properly refers to the extent or amount of property that each heir is legally entitled to inherit from the estate available for distribution. It needs to

be pointed out that the property relation of spouses, as distinguished from their successional rights, is governed differently by the specific and express provisions of Title VI, Chapter I of our new Civil Code (Title III, Chapter I of the old Civil Code.) We, therefore, find that the lower court correctly deducted the half of the conjugal property in determining the hereditary estate left by the deceased Stevenson.

On the second issue, petitioner disputes the action of the Tax Court in exempting the respondents from paying inheritance tax on the 210,000 shares of stock in the Mindanao Mother Lode Mines, Inc. in virtue of the reciprocity proviso of Section 122 of the National Internal Revenue Code, in relation to Section 13851 of the California Revenue and Taxation Code, on the ground that: (1) the said proviso of the California Revenue and Taxation Code has not been duly proven by the respondents; (2) the reciprocity exemptions granted by section 122 of the National Internal Revenue Code can only be availed of by residents of foreign countries and not of residents of a state in the United States; and (3) there is no "total" reciprocity between the Philippines and the state of California in that while the former exempts payment of both estate and inheritance taxes on intangible personal properties, the latter only exempts the payment of inheritance tax.

To prove the pertinent California law, Attorney Allison Gibbs, counsel for herein respondents, testified that as an active member of the California Bar since 1931, he is familiar with the revenue and taxation laws of the State of California. When asked by the lower court to state the pertinent California law as regards exemption of intangible personal properties, the witness cited article 4, sections 13851 (a) and (b) of the California Internal and Revenue Code as published in Deering's California Code, a publication of the Bancroft-Whitney Company, Inc. And as part of his testimony, a full quotation of the cited section was offered in evidence as Exhibit "V-2" by the respondents.

It is well-settled that foreign laws do not prove themselves in our jurisdiction and our courts are not authorized to take judicial notice of them.[5] Like any other fact, they must be alleged and proved.[6]

Section 41, Rule 123 of our Rules of Court prescribes the manner of proving foreign laws before our tribunals. However, although we believe it desirable that these laws be proved in accordance with said rule, we held in the case of *Willamette Iron and Steel Works vs. Muzzal*, 61 Phil., 471, that "a reading of sections 300 and 301 of our Code of Civil Procedure (now section 41, Rule 123) will convince one that these sections do not exclude the presentation of other competent evidence to prove the existence of a foreign law". In that case, we considered the testimony of an attorney-at-law of San Francisco, California, who quoted verbatim a section of the California Civil Code and who stated that the same was in force at the time the obligations were contracted, as sufficient evidence to establish the existence of said law. In line with this view, we find no error, therefore, on the part of the Tax Court in considering the pertinent California law as proved by respondents' witness.

We now take up the question of reciprocity in exemption from transfer or death taxes, between the State of California and the Philippines.

Section 122 of our National Internal Revenue Code, in pertinent part, provides:

"\* \* \* And, provided, further, That no tax shall be collected under this Title in respect of intangible personal property (a) if the decedent at the time of his death was a resident of a foreign country which at the time of his death did not impose a transfer tax or death tax of, any character in respect of intangible personal property of citizens of the Philippines not residing in that foreign country or (b) if the laws of the foreign country of which the decedent was a resident at the time of his death allow a similar exemption from transfer taxes or death taxes of every character in respect of intangible personal property owned by citizens of the Philippines not residing in that foreign country." (Italics supplied.)

On the other hand, section 13851 of the California Inheritance Tax Law, insofar as pertinent, reads:

"SEC. 13851. Intangibles of nonresident: Conditions.—Intangible personal property is exempt from the tax imposed by this part if the decedent at the time of his death was a resident of a Territory or another State of the United States or of a foreign state or country which then imposed a legacy, succession, or death tax in respect to intangible personal property of its own residents, but either:

"(a) did not impose a legacy, succession, or death tax of any character in respect to intangible personal property of residents of this State, or

"(b) Had in its laws a reciprocal provision under which intangible personal property of a non-resident was exempt from legacy, succession, or death taxes of every character if the Territory or other State of the United States or foreign state or country in which the non-resident resided allowed a similar exemption in respect to intangible personal property of residents of the Territory or State of the United States or foreign state or country of residence of the decedent." (Id.)

It is clear from both these quoted provisions that the reciprocity must be total, that is, with respect to transfer or death taxes of any and every character, in the case of the Philippine law, and to legacy, succession, or death tax of any and every character, in the case of the California law. Therefore, if any of the two states collects or imposes and does not exempt any transfer, death, legacy, or succession tax of any character, the reciprocity does not work. This is the underlying principle of the reciprocity clauses in both laws.

In the Philippines, upon the death of any citizen or resident, or non-resident with properties therein, there are imposed upon his estate and its settlement, both an estate and an inheritance tax. Under the laws of California, only inheritance tax is imposed. On the other hand, the Federal Internal Revenue Code imposes an estate tax on non-residents not citizens of the United States,[7] but does not provide for any exemption on the basis of reciprocity. Applying these laws in the manner the Court of Tax Appeals did in the instant case, we will have a situation where a Californian, who is non-resident in the Philippines but has intangible personal properties here, will be subject to the payment of an estate tax, although exempt from the payment of the inheritance tax. This being the case, will a Filipino, non-resident of California, but with intangible personal properties there, be entitled to the exemption clause of the California law, since the Californian has not been exempted from every character of legacy, succession, or death tax because he is, under our law, under obligation to pay an estate tax? Upon the other hand, if we exempt the Californian from paying the estate tax, we do not thereby entitle a Filipino to be exempt from a similar estate tax in California because under the Federal Law, which is equally enforceable in California, he is bound to pay the same, there being no reciprocity recognized in respect thereto. In both instances, the Filipino citizen is always at a disadvantage. We do not believe that our legislature has intended such an unfair situation to the detriment of our own government and people. We, therefore, find and declare that the lower court erred in exempting the estate in question from payment of the inheritance tax.

We are not unaware of our ruling in the case of *Collector of Internal Revenue vs. Lara* (102 Phil., 813; 54 Off. Gaz. 2881) exempting the estate of the deceased Hugo H. Miller from payment of the inheritance tax imposed by the Collector of Internal Revenue. It will be noted, however, that the issue of reciprocity between the pertinent provisions of our tax law and that of the State of California was not there squarely raised, and the ruling therein cannot control the determination of the case at bar. Be that as it may, we now declare that in view of the express provisions of both the Philippine and California laws that the exemption would apply only if the law of the other grants an exemption from legacy, succession, or death taxes of every character, there could not be partial reciprocity. It would have to be total or none at all.

With respect to the question of deduction or reduction in the amount of P4,000.00 based on the U. S. Federal Estate Tax Law which is also being claimed by respondents, we uphold and adhere to our ruling in the *Lara* case (*supra*) that the amount of \$2,000.00 allowed under the Federal Estate Tax Law is in the nature of a deduction and

not of an exemption regarding which reciprocity cannot, be claimed under the proviso of section 122 of our National Internal Revenue Code. Nor is reciprocity authorized under the Federal Law.

On the issue of the correctness of the appraisal of the two parcels of land situated in Baguio City, it is contended that their assessed values, as appearing in the tax rolls 6 months after the death of Stevenson, ought to have been considered by petitioner as their fair market value, pursuant to section 91 of the National Internal Revenue Code. It should be pointed out, however, that in accordance with said proviso the properties are required to be appraised at their fair market value and the assessed value thereof shall be considered as the fair market value only when evidence to the contrary has not been shown. After a careful review, of the record, we are satisfied that such evidence exists to justify the valuation made by petitioner which was sustained by the tax court, for as the tax court aptly observed:

"The two parcels of land containing 36,254 square meters were valued by the "administrator of the estate in the Estate and Inheritance, tax returns filed by him at P43,500.00 which is the assessed value of said properties. On the other hand, defendant appraised the same at P52,200.00. It is of common knowledge, and this Court can take judicial notice of it, that assessments for real estate taxation purposes are very much lower than the true and fair market value of the properties at a given time and place; In fact one year after decedent's death or in 1952 the said properties were sold for a price of P72,000.00 and there is no showing that special or extraordinary circumstances caused the sudden increase from the price of P43,500.00, if we were to accept this value as a fair and reasonable one as of 1951. Even more, the counsel for plaintiffs himself admitted in open court that he was willing to purchase the said properties at P2.00 per square meter. In the light of these facts we believe and therefore hold that the valuation of P52,200.00 of the real estate in Baguio made by defendant is fair, reasonable and justified in the premises." (Decision, p. 19).

In respect to the valuation of the 210,000 shares of stock in the Mindanao Mother Lode Mines, Inc., (a domestic corporation), respondents contend that their value should be fixed on the basis of the market quotation obtaining at the San Francisco (California) Stock Exchange, on the theory that the certificates of stocks were then held in that place and registered with the said stock exchange. We cannot agree with respondents' argument. The situs of the shares of stock, for purposes of taxation, being located here in the Philippines, as respondents themselves concede, and considering that they are sought to be taxed in this jurisdiction, consistent with the exercise of our government's taxing authority, their fair market value should be fixed on the basis of the price prevailing in our country.

Upon the other hand, we find merit in respondents' other contention that the said shares of stock commanded a lesser value at the Manila Stock Exchange six months after the death of Stevenson. Through Atty. Allison Gibbs, respondents have shown that at that time a share of said stock was bid for at only P.325 (p. 103, t.s.n.). Significantly, the testimony of Atty. Gibbs in this respect has never been questioned nor refuted by petitioner either before this court or in the court below. In the absence of evidence to the contrary, we are, therefore, constrained to reverse the Tax Court on this point and to hold that the value of a share in the said mining company on August 22, 1951 in the Philippine market was P.325 as claimed by respondents.

It should be noted that the petitioner and the Tax Court valued each share of stock at P.38 on the basis of the declaration made by the estate in its preliminary return. Patently, this should not have been the case, in view of the fact that the ancillary administrator had reserved and availed of his legal right to have the properties of the estate declared at their fair market value as of six months from the time the decedent died.

On the fifth issue, we shall consider the various deductions, from the allowance or disallowance of which by the Tax Court, both petitioner and respondent's have appealed. Petitioner, in this regard, contends that no evidence of record exists to support the allowance of the sum of P8,604.39 for the following expenses:

(1) Administrator's fee

P1,204.34

(2) Attorney's fee

6,000.00

(3) Judicial and Administrative expenses

1,400.05

Total Deductions

P8,604.39

An examination of the record discloses, however, that the foregoing items were considered deductible by the Tax Court on the basis of their approval by the probate court to which said expenses, we may presume, had also been presented for consideration. It is to be supposed that the probate court would not have approved said items were they not supported by evidence presented by the estate. In allowing the items in question, the Tax Court had before it the pertinent order of the probate court which was submitted in evidence by respondents. (Exh. "AA-2", p. 100, record). As the Tax Court said, it found no basis for departing from the findings of the probate court, as it must have been satisfied that those expenses were actually incurred. Under the circumstances, we see no ground to reverse this finding of fact which, under Republic Act No. 1125, we are not at liberty to review unless the same is not supported by any evidence. For the same reason, we are not inclined to pass upon the claim of respondents in respect to the additional amount of P86.52 for funeral expenses which was disapproved by the court a quo for lack of evidence.

In connection with the deduction of P652.50 representing the amount of realty taxes paid in 1951 on the decedent's two parcels of land in Bagnio City, which respondents claim was disallowed by the Tax Court, we find that this claim has in fact been allowed. What happened here, which a careful review of the record will reveal, was that the Tax Court, in itemizing the liabilities of the estate, viz:

(1) Administrator's fee

P1,204.34

(2) Attorney's fee

6,000.00

(3) Judicial and Administration expenses as of August 9, 1952

2,052.56

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Total

P9,256.89

added the P652.50 for realty taxes as a liability of the estate, to the P1,400.05 for judicial and administration expenses approved by the court, making a total of P2,052.55, exactly the same figure which was arrived at by the Tax Court for judicial and administration expenses. Hence, the difference between the total of P9,256.89 allowed by the Tax Court as deductions, and the P8,604.39 as found by the probate court, which is P652.50, the same amount allowed for realty taxes.

An evident oversight has involuntarily been made in omitting the P2,000.00 for funeral expenses in the final computation. This amount has been expressly allowed by the lower court and there is no reason why it should not be.

We come now to the other claim of respondents that pursuant to section 89 (b) (1) in relation to section 89 (a) (1) (E) and section 89(d), National Internal Revenue Code, the amount of P10,022.47 should have been allowed the estate as a deduction, because it represented an indebtedness of the decedent incurred during his lifetime. In support thereof, they offered in evidence a duly certified claim, presented to the probate court in California by the Bank of California National Association, from which, it would appear, that while still living, Walter G. Stevenson obtained a loan of \$5,000.00 secured by a pledge on 140,000 of his shares of stock in the Mindanao Mother Lode Mines, Inc. (Exhs. "Q-Q4", pp. 53-59, record). The Tax Court disallowed this item on the ground that the local probate court had not approved the same as a valid claim against the estate and because it constituted an indebtedness in respect to intangible personal property which the Tax Court held to be exempt from inheritance tax.

For two reasons, we uphold the action of the lower court in disallowing the deduction.

Firstly, we believe that the approval of the Philippine probate court of this particular indebtedness of the decedent is necessary. This is so although the same, it is averred, has been already admitted and approved by the corresponding probate court in California, situs of the principal or domiciliary administration. It is true that we have here in the Philippines only an ancillary administration in this case, but, it has been held, the distinction between domiciliary or principal administration and ancillary administration serves only to distinguish one administration from the other, for the two proceedings are separate and independent.[8] The reason for the ancillary administration is that, a grant of administration does not, *ex proprio vigore*, have any effect beyond the limits of the country in which it was granted. Hence, we have the requirement that before a will duly probated outside of the Philippines can have effect here, it must first be proved and allowed before our courts, in much the same manner as wills originally presented for allowance therein.[9] And the estate shall be administered under letters testamentary, or letters of administration granted by the court, and disposed of according to the will as probated, after payment of just debts and expenses of administration.[10] In other words, there is a regular administration under the control of the court, where claims must be presented and approved, and expenses of

administration allowed before deductions from the estate can be authorized. Otherwise, we would have the actuaciones of our own probate court, in the settlement and distribution of the estate situated here, subject to the proceedings before the foreign court over which our courts have no control. We do not believe such a procedure is countenanced or contemplated in the Rules of Court.

Another reason for the disallowance of this indebtedness as a deduction, springs from the provisions of Section 89, letter (d), number (1), of the National Internal Revenue Code which reads:

"(d) Miscellaneous provisions.—(1) No deductions shall be allowed In the case of a non-resident not a citizen of the Philippines unless the executor, administrator or anyone of the heirs, as the case may be, includes in the return required to be filed under section ninety-three the value at the time of his death of that part of the gross estate of the non-resident not situated in the Philippines." In the case at bar, no such statement of the gross estate of the non-resident Stevenson not situated in the Philippines appears in the three returns submitted to the court or to the office of the petitioner Collector of Internal Revenue. The purpose of this requirement is to enable the revenue officer to determine how much of the indebtedness may be allowed to be deducted, pursuant to letter (b), number (1) of the same section 89 of the Internal Revenue Code which provides:

"(b) Deductions allowed to nonresident estates.—In the case of a nonresident not a citizen of the Philippines, by deducting from the value of that part of his gross estate which at the time of his death is situated in the Philippines—"(1) Expenses, losses, indebtedness, and taxes.—That proportion of the deductions specified in paragraph (1) of subsection (a) of this section[11] which the value of such part bears to the value of his entire gross estate wherever situated;"

In other words, the allowable deduction is only to the extent of that portion of the indebtedness which is equivalent to the proportion that the estate in the Philippines bears to the total estate wherever situated. Stated differently, if the properties in the Philippines constitute but 1/5 of the entire assets whenever situated, then only 1/5 of the indebtedness may be deducted. But since, as heretofore adverted to, there is no statement of the value of the estate situated outside the Philippines, or that there exists no such properties outside the Philippines do part of the indebtedness can be allowed to be deducted, pursuant to Section 89, letter (d), number (1) of the Internal Revenue Code.

For the reasons thus stated, we affirm the ruling of the lower court disallowing the deduction of the alleged indebtedness in the sum of P10,022.47.

In recapitulation, we hold and declare that

- (a) only the one-half (1/2) share of the decedent Stevenson in the conjugal partnership property constitutes his hereditary estate subject to the estate and inheritance taxes;
- (b) the intangible personal property is not exempt from inheritance tax, there existing no complete total reciprocity as required in section 122 of the National Internal Revenue Code, nor is the decedent's estate entitled to an exemption of P4,000.00 in the computation of the estate tax;
- (c) for the purposes of estate and inheritance taxes, the 210,000 shares of stock in the Mindanao Mother Lode Mines, Inc. are to be appraised at P0.325 per share; and
- (d) the P2,000.00 for funeral expenses should be deducted in the determination of the net estate of the deceased Stevenson.

In all other respects, the decision of the Court of Tax Appeals is affirmed.

Respondents' claim for interest on the amount allegedly overpaid, if any actually results alter a recomputation on the basis of this decision, is hereby denied in line with our recent decision in Collector of Internal Revenue vs. St.

Paul's Hospital (G. R. No. L-12127, May 29, 1959) wherein we held that "in the absence of a statutory provision clearly or expressly directing or authorizing such payment, and none has been cited by respondents, the National Government cannot be required to pay interest."

Wherefore, as modified in the manner heretofore indicated, the judgment of the lower court is hereby affirmed in all other respects not inconsistent herewith. No costs. So ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Gutierrez David, Paredes, and Dizon, JJ., concur.

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[1] "ART. 124. If the marriage is between a citizen of the Philippines and a foreigner, whether celebrated in the Philippines or abroad, the following rules shall prevail:

1. If the husband is a citizen of the Philippines while the wife is a foreigner, the provisions of this Code shall govern their property relations;
2. If the husband is a foreigner and the wife is a citizen of the Philippines, the laws of the husband's country shall be followed, without prejudice to the provisions of this Code with regard to immovable property."

[2] "ART. 1325. Should the marriage be contracted in a foreign country, between a Spaniard and a foreign woman or between a foreigner and a Spanish woman, and the contracting parties should not make any statement or stipulation with respect to their property, it shall be understood, when the husband is a Spaniard, that he marries under the system of the legal conjugal partnership, and when the wife is a Spaniard, that she marries under the system of law in force in the husband's country, all without prejudice to the provisions of this code with respect to real property.

[3] IX Manresa, Comentarios al Codigo Civil Español, p. 202.

[4] Yam Ka Lim vs. Collector of Customs, 30 Phil., 46; Lim & Lim vs. Collector of Customs, 36 Phil., 472; International Harvester Co. vs. Hamburg-American Line, 42 Phil., 845; Beam vs. Yatco, 82 Phil., 30; 46 Off. Gaz., No. 2, p. 530.

[5] Lim vs. Collector of Customs, supra; International Harvester Co. vs. Hamburg-American, Line, supra; Phil. Manufacturing Co. vs. Union Ins. Society of Canton, 42 Phil., 378; Adong vs. Cheong Seng Gee, 43 Phil., 53.

[6] Sy Joe Lieng vs. Sy Quia, 16 Phil., 138; Ching Huat vs. Co Heong, 77 Phil., 985; Adong vs. Cheong, supra.

[7] See Sec. 860, Internal Revenue Code of 1939, 26 USCA 408.

[8] In the matter of the testate estate of Basil Gordon Butler, 90 Phil., 459.

[9] Rule 78, Sees. 1, 2, and 3, Rules of Court. See also Hix vs. Fluemer, 54 Phil., 610.

[10] Rule 78, Sec. 4, *ibid*.

[11] Expenses, losses, indebtedness, and taxes which may be deducted to determine the net estate of a citizen or resident of the Philippines.

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