INTERNATIONAL LAW

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INTRODUCTION

We believe that the development of international law in any jurisdiction is not alone enhanced by the decisions in this field of the courts. Books, treatises, articles and other writings expounding the fundamentals and the minutae, as well as the actual and the possible repercussions thereof, of international law help much in making this particular field of the law broader, humane and workable. Not to be discounted also is the role played by organizations dedicated to the study and refinement of the principles of international law. Worthwhile mentioning in this connection is the fact that the year 1961 saw the birth of the Philippine Society of International Law, instituted and composed of prominent luminaries in the field. Like other associations of its kind, the Society intends to develop and make larger the scope of coverage of international law, both theoritically and in practice.

As for the decisions of the Supreme Court during the year 1961, we have the following, which save for one or two, may not be considered as trail-blazers.

TREATY ON ACADEMIC DEGREES AND THE EXERCISE OF PROFESSIONS BETWEEN THE PHILIPPINES AND SPAIN—Persons who can enjoy privileges thereunder; requisites for such enjoyment

The petitioner *IN RE: PETITION FOR ADMISSION TO THE PHILIPPINE BAR WITHOUT TAKING THE EXAMINATION* [1] averred among others that he was a Filipino citizen, a holder of the degree of "Licenciado En Derecho" from the Central University of Madrid and that thereafter he was allowed to practice law in Spain. In his petition to be admitted to the Philippine Bar without taking the required bar examinations, he claimed that he is entitled under the Treaty on Academic Degrees and the Exercise of Professions concluded between the Philippines and Spain, to practice the legal profession in this country sans taking the bar examinations. *Held:* Petition denied. The provisions of the said Treaty cannot be invoked by the petitioner, because it was intended to govern Filipinos de-

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[1] GRL—Unnumbered, August 15, 1961.

siring to practice their professions in Spain, and Spaniards desiring to practice their professions in the Philippines.[2] Applicant is a Filipino, hence subject to the laws of his country, not being entitled to the privileges extended to Spaniards under the Treaty. Besides the privileges provided therein are made expressly subject to the laws of the Contracting State in whose territory it is desired to practice the legal profession[3]; and the Rules of Court, which had the force of law, requires that before anyone can practise the legal profession in the Philippines, he must first successfully pass the required bar examinations.[4]

RULES FOR ADMISSION TO THE PRACTICE OF LAW NOT MODIFIABLE BY TREATY

In the same case just treated,[5] it was ruled that the Treaty could not have been intended to modify the laws and regulations governing admission to the practice of law in this country for the reason that the Executive Department may not encroach upon the Constitutional prerogative of the Supreme Court to promulgate rules for admission to the practice of law in the Philippines, the power to repeal, alter or supplement such rules being reserved only to the Congress of the Philippines.[6]

The reference to the Executive Department alone seems to be inaccurate in that a treaty is an act not solely by the Executive Department but also by the Senate, whose concurrence is required by the Constitution in the making of treaties.[7] This inaccuracy, however, did not affect the ruling of the Court because only the Congress has the power to repeal, etc., the rules concerning admission, etc., to the Philippine Bar, and the Executive Department and the Senate do not, obviously, constitute the Congress of the Philippines.

EXECUTIVE AGREEMENTS

In the case of *Collector of Customs, et al. v. Eastern Sea Trading*,[8] the validity of the Executive Agreement[9] extending the effec-

[2] Art. III of the Treaty provides: *The Nationals of each of the two countries* who shall have obtained recognition of their academic degrees by virtue of the stipulations of this Treaty *can practise their professions within the territory of the other*, . . . (Emphasis by the Court).

[3] Art. I of the Treaty provides: The Nationals of both countries who shall obtain degrees or diplomas to practise the liberal professions in either of the Contracting States, issued by competent national authorities, shall be deemed competent to exercise said professions in the territory of the Other, *subject to the laws and regulations of the Latter*. . . . (Emphasis by the Court).

[4] Sec. 1, Rule 127, in connection with Secs. 2, 9 and 16, thereof.

[5] See footnote No. 1

[6] Art. VIII of the Philippine Constitution.

[7] Art. VII, Sec. 10(7), CONSTITUTION: Commissioner of Customs, et al. vs. Eastern Sea Trading, G.R. L-14279, October 31, 1961, *infra*, footnote 8.

[8] G.R. L-14279, October 31, 1961.

[9] By this Executive Agreement, Japan was subrogated into the rights, and obligations of the SCAP on March 19, 1952, and since then the agreement have been extended *mutatis mutandis* 18 times. (Communication dated April 24, 1957 of the then Acting Secretary of Foreign Affairs, Exh. "F" in the case).

tivity of our Trade [10] and Financial [11] Agreements with Japan was assailed on the ground that it was entered into by the President without the concurrence of the Senate in the making of the same. *Held:* The concurrence of the Senate is required by our fundamental law in the making of "treaties" [12] which are, however, distinct and different from "executive agreements" which may be validly entered into without such concurrence.

> "Treaties are formal documents which require ratification with the approval of ⅔ of the Senate. Executive Agreements become binding through executive action *without* the need of a vote by the Senate or by Congress.
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> "The right of the Executive to enter into binding agreements without the necessity of subsequent congressional approval has been *confirmed* by long usage, . . .
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> "Furthermore, the United States Supreme Court has expressly recognized the validity and constitutionality of executive agreements entered into without Senate approval." [13] (Emphasis supplied).

The validity of the executive agreement in question is thus patent. In fact, the so-called Parity Rights provided for in the Ordinance Appended to our Constitution were, prior thereto, the subject of an executive agreement made without the concurrence of ⅔ of the Senate of the United States.

NATIONAL LAW OF HUSBAND GOVERNS PROPERTY RELATIONS BETWEEN SPOUSES WHO ARE BOTH FOREIGNERS

If the marriage is between a citizen of the Philippines and a foreigner, whether celebrated in the Philippines or abroad, the law that shall govern their property relations shall be as follows:

> (1) If the husband is a citizen of the Philippines while the wife is a foreigner, the provisions of the Civil Code shall govern their property relations;
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> (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 the Civil Code with regards to immovable property.[14]

Suppose the spouses, although married in the Philippines are both foreigners, which law governs their property relations? This

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[10] Dated May 18, 1950.
[11] Dated May 18, 1950.
[12] Art. VII, Sec. 10(7), CONSTITUTION.
[13] 39 Columbia Review, 753-754; see also U.S. vs. Curtis-Wright Export Corp., 299 U.S. 304; U.S. vs. Belmont, 301 U.S. 324; U.S. vs. Pink, 315 U.S. 203; Ozanic vs. U.S., 188 F. 2d 288; 15 Yale Law Journal, 1905-06; 25 California Law Review 670, 675; Hyde on INTERNATIONAL LAW (Rev. Edition), Vol. 2, pp. 1405, 1416; 1417 & 1418; Willoughby on the United States Constitutional Law, Vol. I (2d. ed.), pp. 5347-540; Moore, INTERNATIONAL LAW DIGEST, Vol. 5, pp. 210-218; Hackworth, INTERNATIONAL LAW DIGEST, Vol. V, pp. 390-407.
[14] Art. 124, New Civil Code.

question was raised in the joint cases of *Collector of Internal Revenue v. Douglas Fisher, et al.*[15] and *Douglas Fisher, et al. v. Collector of Internal Revenue.*[16] The pertinent facts of those cases are as follows: Stevenson was born in the Philippines on August 9, 1874 of British parents; married to Beatrice Mauricia on January 23, 1909 also British. He died February 22, 1951 in San Francisco, California, USA, where he and his wife had established their permanent residence since May 10, 1945. Subsequently, the Collector of Internal Revenue assessed for taxation purposes the estate left by Stevenson in the Philippines in its entirety. The widow, through counsel, objected thereto claiming that one-half of the estate should be deducted from the assessment being her share pursuant to our law on conjugal partnership and in relation to Section 89(c) of the Tax Code. Hence the question: which law governs the property relations of the spouses? Philippine law or, as contended by the Collector, the English law, which adheres to the principle of coverture, the spouses being both English subjects? *Held:* Since the marriage of the Stevensons in the Philippines was in 1909, the law applicable is Article 1325[17] of the old Civil Code, not Article 124 of the new. It is true that both articles adhere to the so-called nationality theory in determining the property relations of spouses where one of them is a foreigner and no marriage settlement is entered into. In such case, the national law of the husband becomes the dominant law. But there is a difference between the two in that whereas Article 124 applies not only to marriage celebrated abroad but also in the Philippines, Article 1325 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 case both spouses are foreigners, married in the Philippines, which law shall apply?

Adopting Manresa's view that

> La regla establecida en el art. 1.315 se refiere a las capitulaciones otorgadas en españa y entre españoles. Si 1.315, a las celebradas, en el estranjero cuando alguno de los conyuges es español. *En cuanto a la regla procedente cuando dos estranjeros, se casan en españa,* o dos españoles en el extranjero, *hay que attender en el primer caso a la legislacion de pais a que aquellos pertenezcan,* y en el segundo a las reglas generales consiguadas en les articulos 9 y 10 de nuestro codigo (Emphasis supplied).

[15] Collector of Internal Revenue vs. Fisher, et al., G.R. L-11622, January 28. 1961.
[16] Fisher, et al. vs. Collector of Internal Revenue, G.R. L-11668, January 28, 1961.
[17] Should the marriage be contracted in a foreign country, between a Spaniard and a foreign woman, or between a foreigner a Spanish woman, and the contracting parties should not make any settlement 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 her husband's country, all without prejudice to the provisions of this Code with respect to real property.

the law determinative of the property relations of the Stevensons would be the English law.

ARRASTRE IS NOT A MATTER OF MARITIME OR ADMIRALTY LAW

The cases of *Delgado Bros, Inc. v. Home Insurance Co., et al.*[18] and *Insurance Company of North America v. Manila Port Service*[19] reiterated the holding of the Court in the previous case of *Macondray & Co., Inc. v. Delgado Bros., Inc.*[20] that arrastre service is not a matter of maritime law subject to the jurisdiction of the courts of first instance. Because to give admiralty jurisdiction over a contract as maritime, such contract must relate to the trade and business of the sea; *it must be essentially and fully maritime in its character;* it must provide for maritime services, maritime transactions, or maritime casualties.[21] (Underscoring supplied) In the instant cases, the position of the obligor (arrastre firm) was like any ordinary depository, i.e., to take good care of said goods and to turn the same to the party entitled to its possession, subject to such qualifications as they may have validly imposed in the contract between the parties concerned. The determination of the question of whether obligor fully discharged its obligations to deliver the goods does not require application of any maritime law and cannot affect either navigation or maritime commerce. The foreign origin of the goods is—under the attending circumstances—immaterial to the law applicable to this case or the rights of the parties herein, or the procedure for the settlement of their disputes.

TRADING WITH THE ENEMY ACT—Confiscation of Property

In order that confiscation will lie under the Trading With the Enemy Act,[22] the property to be confiscated must exist as such. A trade-mark, therefore, that was not registered in the Philippines by a Japanese firm before the war, could not have been confiscated under the said Act. A trade-mark becomes a property only when duly registered with the Director of Patents.[23] This was the ruling in the case of *Asari Yoko Co., Ltd. v. Kee Boc, et al.*[24]

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[18] G.R. L-16567, March 27, 1961.
[19] G.R. L-16573, November 29, 1961.
[20] G.R. L-13116, April 28, 1960.
[21] The James T. Furber, 129 Fed. 808. cited in 66 L.R.A. 212; See also 2 C.J.S. 66.
[22] 40 Stat. 411 c. 105, as amended; 50 U.S.C.A. Appendix. This Act, by consent of the Philippine Government, continued to be in force in the Philippines even after July 4, 1946. Brownell, Jr. v. Sun Life Assurance Co. of Canada, 50 Off. Gaz. 4814; Brownell, Jr. v. Bautista, G.R. L-6801, September 28, 1954.
[23] Art. 520, Civil Code; Sec. 2-A, Republic Act No. 166 (The Trade-Marks Law), as amended.
[24] G.R. L-14086, January 20, 1961

CAN AN ALIEN BE JUDICIALLY DECLARED FILIPINO CITIZEN IN THE NATURALIZATION PROCEEDINGS INSTITUTED BY HIM?

This question was categorically answered in the negative by the Court in the case of *Tan Yu Chin v. Republic.*[25] In that case, Tan Yu Chin in the course of the naturalization proceedings instituted by him, petitioned the CFI hearing the same to have him admitted a citizen of the Philippines and that his naturalization proceedings be dismissed after such admission. The CFI, finding the petitioner to have been born on December 10, 1896 in Jolo, Sulu out of wedlock to a Filipino mother and to a Chinese father, rendered judgment declaring him a Filipino citizen and dismissing his applicaton for naturalization "for being unnecessary." The provincial fiscal appealed. *Held:* Appeal is clearly meritorious. A judicial declaration that a person is a Filipino citizen cannot be made in a petitioin for naturalization wherein it is prayed that petitioner "be admitted a citizen of the Philippines." This, for two reasons:

> (1) Under our laws, there can be no action or proceeding for the judicial declaration of the citizenship of an individual. Courts of justice exist or the settlement of justiciable controversies, which imply a given right, legally demandable and enforceable, an act or omission violative of said right, and a remedy granted or sanctioned by law, for breach of right. As an incident only of the adjudication of the rights of the parties to a controversy, the court may pass upon, and make a pronouncement relative to their status; otherwise, such a pronouncement is beyond judicial power. Thus, for instance, no action for proceeding may be instituted for a declaration to the effect that plaintiff is married, or single, or a legitimate child, although a finding thereon may be made as a necessary premise to justify a given relief available to one enjoying said status. At times, the law permits the acquisition of a given status; such as naturalization, by judicial decree. But there is no similar legislation authorizing the institution of a judicial proceeding to declare that a given person is part of our citizenry.
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> (2) The petition for naturalization in this case, and the declaration of intention filed by petitioner herein, state that he is a citizen of Nationalist China, and that he wants to become a citizen of the Philippines. Moreover, in the former he prays "to be admitted as citizen." In other words, the question of whether or not petitioner is a citizen of the Philippines has never been put in issue in this case. As a consequence, the court *a quo* went beyond the issues raised by the pleadings and accordingly acted in a manner so irregular as to in effect exceed its jurisdiction, in declaring petitioner a Filipino citizen.

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[25] G.R. L-15775, April 29, 1961. This case, by express declaration of the Court, through Mr. Justice J.B.L. Reyes, over-ruled the holdings in Pablo y Sen. et al. v. Republic, G.R. L-6868, April 30, 1955 and other previous cases. See also Eleuteria Feliseta Tan v. Republic, G.R. L-16108, October 31, 1961, echoing the ruling in this case.

This case which reiterated the ruling of the Court in *Tan vs. Republic*,[26] should however be distinguished from the previous case of *Palanca vs. Republic*[27] wherein the Court upheld the validity of the declaration made by the lower court that Palanca was a citizen of the Philippines. Whereas in the case at bar, the petitioner failed to place in issue the fact of his Philippine ctizenship, in the Palanca case, petitioner through appropriate pleadings averred that he possessed the status of being a Filipino citizen, thereby putting the same in issue.

DEPORTATION OF ALIENS

Statement of Falsehood in Certificate of Registration

In the case of *Shiu Shun Man et al. vs. Emilio L. Galang et al.*[28] the ruling was that an alien who deliberately and willfully declared under oath, and represented himself as single before the Board of Special Inquiry of the Bureau of Immigration during an investigation conducted by the latter, as well as in the application for Alien Certificate of Registration, when in fact he is married, is liable for deportation under the Immigration Law of 1940.[29] This is so notwithstanding the belief of the alien that his marriage in China is not recognized in this country because the proper thing that he should have done was to give his true civil status as it is in the light of Chinese laws, and leave the Philippine authorities to determine what his civil status would be in the light of our laws. Besides, in this case, there is evidence to show that petitioner's purpose in claiming at first that he was single before the Philippine consulate in Hong Kong was to simplify his application for entry into the Philippines. Hence, said statement cannot be claimed to have been made in good faith and without malice of any kind.

Violation of Condition for Admission into the Philippines

Where an alien is admitted into the Philippines on condition that he pursue a definite occupation while in our country, such alien must, during his stay here, be nothing else but pursue that particular occupation. So that in the case of *Singh vs. Board of Commissioners of the Bureau of Immigration*[30] the alien there who was admitted into the Philippines on condition that he be a dry goods merchant only, was ordered deported when he was found to have violated

[26] G.R. L-14159, April 18, 1960.
[27] 45 Off. Gaz. Sup., 204.
[28] G.R. L-16486. December 30, 1961.
[29] Com. Act No. 613, as amended provides: Any individual who in any immigration matter shall knowingly make under oath any false statement or representation shall be guilty of an offense, and upon conviction thereof shall be fined not more than one thousand pesos and imprisoned for not more than two years, and deported if he is an alien.
[30] G.R. L-11015, February 25, 1961

the condition of his stay here by plying his trade as a mere peddler,[31] and because he accepted an employment as a security guard in the US Army at Ft. McKinley.

PROOF OF FOREIGN LAW

Must be According to the Rules of Court—Exceptions

It is well-settled that foreign laws do not prove themselves in our jurisdiction and our courts are not authorized to take judicial notice thereof.[32] Like any other fact, they must be alleged and proved.[33] The manner of proving foreign laws before our tribunals is prescribed by the Rules of Court.[34] However, although it is desirable that foreign laws be proved in accordance with the said Rules, "a reading of Sections 300 and 301 of our Code of Civil Procedure (now Sec. 41, Rule 123, Rules of Court), will convince one that these sections do not exclude the presentation of other competent evidence to prove the existence of a foreign law.[35]

In *Collector of Internal Revenue vs. Douglas Fisher, et al.* and *Douglas Fisher et al. vs. Collector of Internal Revenue, supra,*[36] all that was done to prove the foreign law was, thus:

> Counsel for respondent 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, he cited Art. 4, Sections 13851 (a) and (b) of the California Internal and Revenue Code as published in Derring's California Code, a publication of the Bancroft-Whitney Co., Inc. And as part of his testimony, a full quotation of the cited section was offered in evidence as "Exh. V-2", by the respondent.

The Collector contended that the foreign law involved was not duly proven. In disregarding the contention of the Collector, the Court invoked its ruling in the case of *Williamette Iron & Steel Works vs. Muzzal, supra,*[37] thus: In line with the view expressed by this Court in the Willamette case, we find no error on the part of the lower

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[31] The Court made a distinction between a "merchant" and a "peddler". A "peddler is one who travels about from place to place making petty sales, while a "merchant" is one who is engaged in buying and selling merchandise, on a more or less large scale, at a fixed place of business. 39 C.J.S. 1951.

[32] Lim v. Col. of Customs, 36 Phil. 472; International Harvester Co. v. Hamburg American Line, 42 Phil. 845; Philippine Manufacturing Co. v. Union Insurance Surety of Canton. 42 Phil. 328; Adong v. Cheong Seng, 43 Phil. 531.

[33] Sy Joc Lieng v. Sy Quia, 16 Phil. 138; Ching Huat v. Co Heong, 177 Phil. 986; Adong v. Cheong Seng, *supra;* In re Johnson, 39 Phil. 156.

[34] Sec. 41, Rule 123.

[35] Williamette Iron & Steel Works v. Muzzal, 61 Phil. 471. In this case, 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 was considered sufficient evidence to establish the existence of said law.

[36] See footnotes 15 and 16.

[37] See footnote 35.

court in considering the pertinent Californian law as proved by the respondents.

"Processual Presumption"

In Fisher cases, the Court had occasion to reaffirm the doctrine which Wharton calls "processual presumption" that in the absence of proof as to what is the foreign law involved on a particular matter, a court is justified in indulging in the assumption that such foreign law on the matter is the same as ours.[38]

PROTECTION OF FOREIGN TRADE MARKS

In *Asari Yoko Co., Ltd. vs. Kee Boc et al.*[39] petitioner Kee Boc applied to the Director of Patents for the registration of a particular trade mark which he claimed to have first use it in the Philippines. Asari Yoko, a Japanese corporation, opposed the registration on the grounds, *inter alia,* that it had already used and registered the trade mark in question in Japan, and that it had prior use[40] of it in the Philippines, it having used it in the goods that it exported to this country. Notwithstanding that the oppositor's claim was supported by the evidence, the Director of Patents dismissed the opposition, awarding ownership over the trade mark to Kee Boc. In so deciding, the Director imposed the condition that before a trade mark registered in one country may be recognized in another, there must be a formal commercial agreement between the two nations to that effect. When the case reached the Supreme Court, the Director's decision was reversed, the Court holding that the condition imposed by the Director, characterized by the Court as "special and strict," is inconsistent with the freedom of trade recognized in modern times. Amplifying its ruling, the Court said that Japan was occupied by the United States since 1945; hence under the latter's control. The Philippines was always in commercial relations with the United States. It cannot be held then that the entry of goods from Occupied Japan to the Philippines is illegal, or is not legitimate trade or commerce, which can give rise to any rights to trade marks.

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[38] Yam Ka Lim v. Collector of Customs, 30 Phil. 46; Lim v. Col. of Customs, 36 Phil. 472; International Harvester Co. v. Hamburg-American Line, 42 Phil. 845; Beam v. Yatco, 46 Off. Gaz., Supp. 2, 530.

[39] G.R. L-14086, January 20, 1961, see Footnote 24.

[40] Sec. 2-A, Republic Act No. 166, provides: Anyone who lawfully produces or deals in merchandise of any kind, or who engages in any lawful business x x x by actual use thereof in manufacture, trade x x x may appropriate to his exclusive use a trademark x x x not so appropriated by another, to distinguish his merchandise, x x x from the merchandise, x x x of others. The ownership or possession of a trade-mark x x x heretofore or hereafter appropriated x x x shall be recognized and protected in the same manner and to the same extent as are other property rights known to law.

IS THERE RECIPROCITY BETWEEN THE CALIFORNIA LAW AND PHILIPPINE LAW ON ESTATE AND INHERITANCE TAXES?

The Fisher cases, *supra*,[41] raised this issue. It was there claimed that a portion of Stevenson's estate, consisting of shares of stock, is exempt from the estate and inheritance tax on account of the reciprocity clause in Section 122 of the Tax Code. Said section in so far as pertinent provides:

> . . . And provided, further, That no tax (inheritance and estate) 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. (Emphasis supplied).

A reading of Section 122 shows that before exemption may be allowed on the basis of reciprocity, the following conditions must be present:

> (1) That the property sought to be taxed is an intangible personal property in the Philippines;
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> (2) That the decedent at the time of his death was a non-resident of the Philippines; and
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> (3) That the laws of the country in which the decedent was a resident did not at the time of his death impose upon Filipinos any transfer taxes or death taxes of any sort, or that such laws, at the said time, exempted Filipinos from the payment of the aforesaid taxes.

Applying these requirements to the case at bar it would appear that conditions (1) and (2) were satisfied considering that the property involved is shares of stocks and that Stevenson, whose estate is the subject of the instant proceedings, was a resident at the time of his death not of the Philippines, but of California, USA. *Query:* Was the third requirement satisfied? The Californian law on the matter as proved [42] by the taxpayer's representatives is the following:

> Sec. 13851. Intangibles of non-residents. 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

[41] See Footnotes 15 and 16 and 35.
[42] See footnotes 35 and 36.

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 the state of the United States or foreign state or country in which the non-resident resided allowed a similar exemption in respect of intangible personal property of residents of the territory or state of the United States or foreign state or country of residence of the decedent.[43]

It is clear from both quoted provisions that the reciprocity must be total that is with respect to transfer, death taxes of any and every character, in the case of the Philippine law, and to legacy, succession or death taxes of any and every character in the case of the Californian 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.

If we were to apply the two laws as they are the reciprocity may work. But a third law need be applied, that is the United States Federal Law, which is equally enforceable in California. This law will require the estate of the Filipino, resident of the United States, at the time of his death, to pay estate tax, there being no reciprocity recognized by said law in respect thereto. The result then is that whereas the Filipino estate and the Californian estate may be exempt from inheritance tax in California and the Philippines, respectively, yet they may not be so exempt from the estate tax. Ultimately then, there is only partial exemption, hence the reciprocity clauses cannot be availed of because under the same the exemption must be total or not at all.

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[43] This case was differentiated by the Court from the case of Collector v. Lara, G.R. L-9456 & L-9481, Jan. 6, 1958; 54 Off. Gaz. 288, in which the estate of deceased Miller was exempted from the payment of the inheritance tax imposed by the BIR, thus: 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 squarely raised; hence the ruling there cannot control the case at bar. Be that as it may, we now declare that in view of the express provisions of both the Philippine and Californian laws that exemption could 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 should have to be total or none at all.