JOSE CONCEPCION, as Ancillary Administrator of the Estate of Mary H. Mitchell-Roberts (deceased), and JACK F. MITCHELL-ROBERTS,
Petitioners,

- versus - C.T.A. CASE NO. 669

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is a claim for the refund of the sums of ₱1,181.33 and ₱2,616.10 representing estate and inheritance taxes, respectively, including surcharges and interest, on 50 shares of stock.

Jack F. Mitchell-Roberts and Mary H. Mitchell-Roberts, English subjects, were married in England. They did not execute an antenuptial contract.

Jose Concepcion, copetitioner, is the ancillary administrator of the estate of Mary H. Mitchell-Roberts.

During their marriage, Jack F. Mitchell-Roberts and Mary H. Mitchell-Roberts acquired one hundred (100) shares at a par value of ₱500.00 each of the stock of the Edward J. Nell Company, a corporation incorporated under the laws of the Philippines, under the following terms:

> "J. F. Mitchell-Roberts and/or Mary H. Mitchell-Roberts as joint tenants with full rights of survivorship and not as tenants in common."
> (Exhs. D, D-1, D-2, BIR rec. pp. 32-34)

On February 4, 1953, Mary H. Mitchell-Roberts died in San Francisco, State of California, U.S.A. (Exh. C, CTA rec. p. 82), her residence (Exh. M-1, BIR rec. p. 65).

Subsequently, Jose Concepcion, as attorney-in-fact of J. F. Mitchell-Roberts, filed an estate and inheritance tax return of the properties left by Mary H. Mitchell-Roberts, declaring therein the 100 shares of common stock of the Edward J. Nell Company (BIR rec. p. 8). After investigation and determination of the book value as of February 4, 1953 of the said shares of stock, computed hereunder:

Capital stock (paid up) 2500 shares @ ₱500.00		₱1,250,000.00	
Surplus as of December 31, 1952		474,548.62	
Add: Capital Reserves			
Reserve for taxes (unexpended)	₱ 4,302.00		
Reserve for stiff contingencies ..	193,070.53		
Reserve for Mdse. contingencies...	140,000.00		
Net profit, Jan. 1953	35,902.47		
Net profit, Feb. 1-4, 1953	7,003.44	380,278.44	854,827.06
Net worth as of Feb. 4, 1953			₱2,104,827.06

Net worth	₱2,104,827.06
Divided by: Number of shares issued	2,500
Book value per share	₱ 851.53
Book value of 100 shares	85,153.00

(Exh. 3-A, BIR rec. p. 39)

respondent assessed estate and inheritance taxes in the respective amounts of ₱862.22 and ₱1,884.62 on the 50 shares on the theory that the 100 shares of stock are conjugal property, one-half of which belonged to the deceased wife and descended to petitioner Jack F. Mitchell-Roberts upon her demise. Petitioners contested this assessment, claiming that no estate and inheritance tax is due on the ground that:

> (1) There was no transmission of property since by the law of England, the husband, Jack F. Mitchell-Roberts, owns all the properties acquired during the marriage; and
>
> (2) The shares of stock were issued to the spouses as joint tenants with full rights of survivorship.

Their protest having been adversely entertained, petitioners appealed to this Court in CTA Case No. 168. However, upon motion of the Commissioner of Internal Revenue, the petition for review in said case was dismissed for lack of jurisdiction. Whereupon, on June 14, 1957, petitioners paid the taxes in question amounting to ₱1,181.33 (as estate tax) and ₱2,616.10 (as inheritance tax), inclusive of delinquency penalties, and at the same time filed a claim for the refund of said amounts (Exh. A, BIR rec. pp. 83-87). In the claim for refund, petitioners also invoked the reciprocity provision of Section 122 of the Revenue Code (CTA rec. pp. 92-93). Without waiting for the decision of respondent on the claim for refund, petitioners instituted the instant appeal on June 11, 1959 in order to avoid the prescriptive period of two years provided for in Section 306 of the Revenue Code.

The issues posed by the parties are:

1. What law governed the property relations of

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the spouses Jack F. Mitchell-Roberts and Mary H. Mitchell-Roberts in respect to the 100 shares of stock in question?

2. Does the law on inheritance tax of the State of California, U.S.A. give reciprocity to Section 122 of our Revenue Code?

3. What is the book value of the 100 shares of stock in question as of February 4, 1953?

With respect to respondent's defense that petitioners are now estopped from denying the legality and correctness of the assessment for estate and inheritance taxes in view of the fact that they paid the same in pursuance of a decision of the Commissioner which has become final, executory and demandable as a result of the dismissal of CTA Case No. 168, we held in a case where the same defense was set forth:

> "We are not in accord with respondent's view. While it is true that the assessment appealed from has become final, executory and demandable when petitioner failed to file its appeal within the reglementary period of 30 days, such consequence did not close all avenues available to the taxpayer. Having been blocked, by lapse of time, in its attempt to bring the case to this Court under Section 11 of Republic Act No. 1125, petitioner lost no time in availing itself of the remedy afforded by Section 306 of the Tax Code by paying the tax and seasonably filing a written claim for refund with the res-

pondent. It was through this procedure that petitioner finally succeeded in elevating the case at bar to this Court." (La Paz y Buen Viaje (La Dicha Cigar & Cigarette Factory) vs. Commissioner of Internal Revenue, CTA Case No. 700, August 4, 1960, aff'd in G.R. No. L-17830, March 30, 1963)

We find no reason justifying a departure from the afore-quoted ruling.

We come now to the question as to what law governed the property relations of the spouses Jack F. Mitchell-Roberts and Mary H. Mitchell-Roberts in respect to the 100 shares of stock in the Edward J. Nell Company.

Petitioners maintain that, under the provisions of Sec. 124 of the Civil Code of the Philippines, the property relation of the Mitchell-Roberts spouses was governed by the law of England which vests in the husband ownership over all properties acquired by the wife before and during the marriage. We quote Section 124 hereunder:

> "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."

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Although the above-quoted provisions do not expressly provide for a situation where both spouses are foreigners, it is contended by petitioners that the same, nevertheless, should be made to apply to the spouses, Jack and Mary Mitchell-Roberts. They cite the commentary of Manresa on Section 1325 of the Spanish Civil Code from whence Article 124 was taken.

> "Por el contrario, ya se celebre el matrimonio en España or fuera de la misma entre dos extranjeros, o entre un extranjero y una española, si nada se estipulo expresante, se entienden casados bajo el regimen del derecho comun en el pais del varon. Parece desprenderse de estas palabras del Codigo en el Art. 1325, que si el conjuge varon es frances, se entiende aceptado el regimen o sistema restringido de comunidad legal existente in Francia; x x x." (Tomo IX, p. 172)

On the other hand, respondent believes that Article 16, not Article 124, of the Civil Code should determine the rights of the spouses on their personal properties located in the Philippines. Article 16 states:

> "Art. 16. Real property as well as personal property is subject to the law of the country where it is situated.
>
> However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found."

It appears that the spouses Jack F. Mitchell-Roberts and Mary M. Mitchell-Roberts were married in England in 1908 (see Exh. A, BIR rec. p. 87). There-

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fore, the applicable law is Article 1325 of the old Civil Code and not Article 124 of the New Civil Code which took effect only in 1950 (Collector of Internal Revenue vs. Fisher, et al., G. R. No. L-11622; January 28, 1961; Fisher, et al. vs. Collector of Internal Revenue, et al., G. R. No. L-11668, January 28, 1961). We quote Article 1325:

> "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 a 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."

At the risk of being repetitious, we restate what Manresa said on the quoted provisions:

> "Por el contrario, ya se celebre el matrimonio en España o fuera de la misma entre dos extranjeros, o entre un extranjero y una española, se nada se estipulo expresante, se entienden casados bajo el regimen del derecho comun en el pais del varon. Parece desprenderse de estas palabras del Codigo en el Art. 1325, que si el conjuge varon es frances, se entiende aceptado el regimen o sistema restringido de comunidad legal existente in Francia; x x x." (Tomo IX, p. 172)

Article 1325, as explained (in Tomo IX, p. 172) by Manresa, adheres to the so-called nationality theory in determining the property relation of spouses where one of them is a foreigner and they have made no antenuptial contract relative to their property rights and interests. It decrees that the national law of the husband is the dominant law in ascertaining the property relation between spouses.

Considering that the Mitchell-Roberts spouses, both non-resident English subjects, were married in England, we believe and so hold that their property relation was governed by the law of England which is the national law of the husband.

Under English law, as proved by petitioners (Exhibits E & E-1), all properties acquired by the wife before and during the marriage belong to the husband. Accordingly, the 50 shares of stock of Edward J. Nell and Company which Mary H. Mitchell-Roberts acquired during her marriage belong to her husband, petitioner Jack F. Mitchell-Roberts. There was no transmission of property from wife to husband. Hence, no death tax, estate and inheritance, is due on said 50 shares of stock.

The instant case should be contra-distinguished from the cases of the Collector of Internal Revenue vs. Douglas Fisher and Bettina Fisher and the Court of Tax Appeals, G.R. No. L-11622, and Douglas Fisher and Bettina Fisher vs. the Collector of Internal Revenue and the Court of Tax Appeals, G.R. No. L-11668, promulgated on January 28, 1961, wherein the Supreme Court, affirming the decision of this Court, applied the Philippine law instead of the law of England in determining the property relation of the spouses. In those cases, the husband was born in the Philippines of British parents and was married in the Philippines to a British subject on January 23, 1909. The spouses resided in the Philippines until 1945 when they established their residence in the State of California, U.S.A. Although the law of England was invoked by the Collector of Internal Revenue in said cases, no proof was adduced to establish the same. In the instant case, the spouses were British subjects since their births, were married in England in 1908, and never resided in the Philippines. The English law on the property relation of husband and wife is not only invoked, but proved as well.

With respect to the contention of respondent that Article 124 should be read in conjunction with Article 16 of the New Civil Code, suffice it to say that the law applicable, as we pointed out earlier, is Article 1325 of the Old Civil Code. Article 1325, even if read with Article 10 (from which Article 16 was derived) of the old Civil Code, would not admit of the pretention of respondent inasmuch as, unlike Article 16 of the New Civil Code, the first paragraph of Article 10 does not mention personal property.

Having thus disposed of the first issue, we find it unnecessary to consider the other questions raised in this appeal.

IN VIEW OF THE FOREGOING CONSIDERATIONS, respondent Commissioner of Internal Revenue is hereby ordered to refund the total sum of ₱3,797.43 to petitioners, without pronouncement as to costs.

SO ORDERED.

Quezon City, September 30, 1964

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

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