

CARLOS PALANCA, PETITIONER AND APPELLEE, VS. THE REPUBLIC OF THE PHILIPPINES, MOVANT AND APPELLANT.

G.R. No. L-301. April 07, 1948

Ponente: PADILLA, J.

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PADILLA, J.:

In 1941 Carlos Palanca applied, for citizenship under the provisions of Commonwealth Act No. 473. Hearing on the petition was held but no decree was entered because the Pacific War supervened. On 11 September 1944, the Court of First Instance of Manila under the Japanese sponsored Republic of the Philippines entered a decree granting the petition upon the evidence heard before the outbreak of the war. However, the petitioner did not take the prescribed oath as a condition precedent to the issuance of the certificate of naturalization. After the reconstitution of the record of the proceedings which had been destroyed as a result of the battle for the liberation of Manila, the petitioner took the oath and he was issued certificate of naturalization No. 1000.

On 3 July 1945, the Solicitor General filed a motion which he amended on 8 August, praying for the cancellation of the certificate of naturalization issued to the petitioner, on the ground that the latter does not and did not possess good moral character, that he has not conducted himself in an "irreproachable manner in his relation with the constituted government," that he is not loyal to the Commonwealth Government of which he desires to be citizen, and that citizenship, being a political status, the decree granting it entered by a court exercising judicial powers under the authority of the enemy sponsored Government is null and void.

At the hearing of the motion for cancellation, when Solicitor Pedro S. Reyes was starting to present the evidence for the Government, counsel for the petitioner asked leave of the court to be allowed to prove that the petitioner is a Filipino citizen, and informed the court that upon that ground he would join in the move to cancel the certificate of naturalization issued to the petitioner (p. 17, t.s.n.). The leave having been granted, counsel for the petitioner submitted evidence which shows that--

Carlos Palanca arrived in the Philippines in the year 1884 and that since his arrival he continually resided in the City of Manila with the exception of the occasion, in the year 1902, when he left the Philippines for two months to attend the burial of his uncle, Don Carlos Palanca, which took place in China; that in 1894 he wanted to marry a Filipina, and because the Archbishop of Manila had decreed that a Chinaman, even if Christian, could not marry a native of the Philippines, in that year (it must have been in 1893) he applied for Spanish citizenship; that in connection with said application he received from the Gobernadorcillo de Sangleyes the document Exhibit A, dated January 19, 1894, wherein the petitioner, Carlos Palanca, was informed of the Royal Decree of the Regent, the Queen Maria Cristina, of November 30, 1893, by which he was granted the Spanish citizenship in accordance with the laws of the Monarchy, which was to be effective upon giving his oath provided for in such cases and after he shall have renounced his foreign allegiance; that, in addition to Exhibit A, petitioner also received and presented as Exhibit B a notification to the Gobernadorcillo de Sangleyas from the Secretaryship of the General Government whereby the former was informed of the Royal Decree of the Regent, Queen Maria Cristina, dated November 30, 1893, by which the applicant, Carlos Palanca was granted the Spanish citizenship to enter into effect upon his giving the

corresponding oath (In this communication the text of the Royal Decree is quoted); that on the day following the receipt of Exhibit A, the petitioner repaired to Malacañan and there gave his oath of allegiance and received the corresponding certificate of Spanish citizenship, which was burned in his house at Taft Avenue during the battle for the liberation of Manila on the return of the Americans in 1945; that Exhibit B was the communication referred to as having been received by the Gobernadorcillo de Sangleyes from the Secretaryship of the General Government; that on February 4, 1894, and after having acquired the Spanish citizenship, Carlos Palanca Tan Tiaojua (Quian Lay) married Cesarea Gano Torres, native and resident of the District of Binondo, Island, 1a. (Exh. D); that from then on the petitioner, Carlos Palanca, considered himself a Spanish subject, was registered as such in the Spanish Consulate General in Manila and has as late as March 2, 1942, received from said Consulate Duplicate Certificate No. 548 issued by the Spanish Consul General, Jose del Castano (Exhibit C); that because the petitioner, Carlos Palanca, believed himself to be a Spanish subject and desirous of acquiring Filipino citizenship by naturalization, he instituted this case in 1941, and when he married on April 12, 1945, his present wife, Gonzales, prior to the receipt of his Certificate of Naturalization No. 1000, he made it appear therein that he was of Spanish nationality; and that during the course of his application for Filipino citizenship by naturalization, he also adduced evidence to show that he had acquired the Spanish nationality during the Spanish regime in these Islands. (Order of the Court of First Instance of Manila dated 7 January 1946.)

Holding that the petitioner is a Filipino citizen pursuant to sec. 4 of the Act of Congress of 1 July 1902 and sec. 2 of the Act of Congress of 29 August 1916, the trial court granted the motion for cancellation of the certificate of naturalization issued to the petitioner, not upon the grounds alleged in the notion but for the reason that the certificate of naturalization was unnecessary. From this order the Solicitor General in behalf of the Government appeals.

It is earnestly urged by the Solicitor General that, because of the second paragraph of Article IX of the Treaty of Paris which stipulated that--

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United states shall be determined by the Congress,

sec. 4 of the Act of Congress of 1 July 1902, which provides —

That all inhabitants of the Philippine Islands, continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, * * * shall be deemed and held to be citizens of the Philippine Islands. * * *.

and sec. 2 of the Act of Congress of 29 August 1916, which provides —

That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, * * * shall be deemed and held to be citizens of the Philippine Islands, * * *

should be construed to refer not to all inhabitants of the Philippine Islands but only to native inhabitants thereof. Stated differently, the term "all inhabitants" mean native inhabitants only, according to the interpretation and contention of the Solicitor General. The provisions of the Acts of Congress quoted above do not have the import given them by the Solicitor General, even if they were construed in connection with the second paragraph of Article IX of the Treaty of Paris also quoted above. By the treaty of Paris, Spain ceded to the United States the territory known as the Philippine Islands. There was no need of stipulating on the future political status of the inhabitants of the Philippine Islands thus ceded, except perhaps on the status of those who might choose to preserve their allegiance to Spain (Article III, par. 1, Treaty of Paris), because the power and authority to determine the political status of said inhabitants was inherently vested in the United States. There could be no

limitation upon the power and authority to determine the political status of said inhabitants by the United States, and for that reason the enactment of a law by the latter declaring that all inhabitants of the Philippine Islands, who were Spanish subjects on the 11th day of April, 1899, and then resided therein, are citizens thereof, cannot be construed to contravene the treaty stipulation referred to. The plenipotentiaries of Spain who signed the Treaty of Paris could not have been solicitous only about the future political status of her subjects born in Spain and residing in the Philippine Islands and neglectful of the status of her subjects residing in the Philippine Islands who were not born in Spain. If Spain had allowed her subjects born in Spain who were residing in the Philippine Islands to become citizens of the latter upon their failure to preserve their allegiance to her (Spain), it could not have been her intention not to allow her subjects residing in the Philippine Islands who were not born in Spain to become citizens of the country of their residence in the same way that she had allowed her subjects born in Spain and residing in the Philippine Islands to become citizens of the latter, or, by failing to stipulate on their future political status, to make them citizens of their country of origin, the citizenship of which they had renounced by becoming Spanish subjects. There seems to be no doubt that the lack of treaty stipulation regarding Spanish subjects residing in the Philippine Islands, who were not born in Spain, was merely due to an oversight. It was not deliberate for the purpose of reverting them to the citizenship of their country of origin, for a change of citizenship must be voluntary or by an act, expressed or implied, of the citizen or subject. Hence, it may safely be asserted that the second paragraph of Article IX of the Treaty of Paris is not a limitation upon the power of the United States to determine the political status of all inhabitants of the Philippines who were Spanish subjects on the 11th day of April 1899 and continued to reside therein. There being no limitation, as there could be none, the petitioner, who was an inhabitant of the Philippine Islands and a naturalized subject of Spain on the 11th day of April, 1899, is a Filipino citizen, by virtue of the provisions of sec. 4 of the Act of Congress of 1 July 1902 and of sec. 2 of the Act of Congress of 29 August 1916. Under the Constitution he is also a citizen of the Philippines because he was such at the time of the adoption of the Constitution.

Before the enactment of Commonwealth Act No. 63, as amended, there was no law providing for causes which may result in the forfeiture of Philippine citizenship, but international law recognizes expatriation, naturalization in a foreign country, military service rendered in and for another country, and marriage of a female citizen to a foreigner--to cite some instances--as causes which may give rise to the loss of citizenship. The evidence does not show that the petitioner had expatriated himself, that he had been naturalized in a foreign country, or that he had rendered military service in and for another country. Except an absence of two months in 1902 he has never been out of the Philippines.

His holding out as Spanish subject, as shown in his two marriage certificates (Exhibits D and F) and in his registration in the Spanish Consulate as such subject, has been satisfactorily explained. He only came to know after he had filed his petition for naturalization that, under the Treaty of Paris and the Acts of Congress of the United States already referred to, he is a Filipino citizen. A proof thereof is his application for citizenship in 1941. But his mistake or misapprehension as to his citizenship is not a sufficient cause or reason under the law for the forfeiture of his Philippine citizenship. Neither may such mistake or misapprehension constitute estoppel.

The motion for cancellation is based upon the provisions of section 18 (a) of Commonwealth not No. 473. But the trial court ordered the cancellation of the petitioner's certificate of naturalization, not because he had obtained it fraudulently or illegally, but because he does not need it, as he is a Filipino citizen. Upon the facts established, it cannot be held that the petitioner secured his certificate of naturalization fraudulently or illegally. Thus, under the law invoked by the Solicitor General, the cancellation prayed for cannot be granted for lack of evidence to show fraud or illegality on the part of the petitioner in the obtainment of the certificate of naturalization. At most, the certificate may be held illegal because it was issued pursuant to a decree entered by a court exercising judicial powers under the authority of the enemy sponsored Republic of the Philippines, logically, however, the

cancellation was correctly ordered, because a Filipino citizen need not apply for such citizenship by naturalization or have a certificate of naturalization to be a citizen of the Philippine Islands of which he is already a citizen.

The order appealed from is affirmed, without costs.

Moran, C. J., Paras, Pablo, Bengzon, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

Appellee Carlos Palanca was a Chinese citizen by birth and continued to be so until November 30, 1893, when he was granted Spanish citizenship in accordance with the laws of the monarchy, by a royal decree of the regent, the queen Maria Cristina of Spain. He wanted to marry a Filipina but the Archbishop of Manila had decreed that a Chinaman, even if Christian, could not marry a native of the Philippines. To accomplish the marriage, appellee applied for Spanish citizenship.

On February 4, 1894, after having acquired Spanish citizenship, Palanca married Cesarea Cano Torres. Since then he considered himself a Spanish subject, registered as such in the Spanish Consulate General in Manila and has as late as March 2, 1942, received from the said consulate duplicate certificate No. 548. In 1941 he instituted this case to acquire Filipino citizenship. On April 12, 1945, when he married Rosa Gonzales, his present wife, he made it appear in the contract of marriage that he was of Spanish nationality.

The above facts are stated in the brief for appellee Palanca.

In this naturalization proceedings, after the Solicitor General had filed on July 3, 1945, a motion to set aside the certificate of naturalization issued to Carlos Palanca pursuant to a decision rendered during the Japanese regime on September 11, 1944, the lower court issued on January 7, 1946, an order declaring Carlos Palanca a Filipino citizen, which is now under our consideration.

The motion to set aside the certificate of naturalization issued to Carlos Palanca reads as follows:

"Now come the undersigned counsel on behalf of the Commonwealth Government of the Philippines and to this Honorable Court, with leave first being had, respectfully set forth and allege:

"1. That the above-entitled case was heard and tried before the Court of First Instance of Manila in the month of November, 1941, and was pending decision therein when the Commonwealth Government was overthrown and displaced by the Imperial Japanese Forces in the early part of 1942;

"2. That the applicant, after the Japanese Military Administration had ordered the suspension of action on cases of this nature, in his motion dated July 29, 1944, asked the Court of First Instance of Manila organized and existing under the Japanese sponsored Republic of the Philippines, that the case be decided and given due course asserting that the applicant was neither hostile to nor an enemy of the Japanese Empire;

"3. That on September 11, 1944, Judge Roman A. Cruz of the Court of First Instance of Manila during the regime of the Japanese-sponsored Republic of the Philippines, promulgated the decision decreeing that the applicant, Carlos Palanca, satisfied the requirements of law to become a Filipino citizen and ordering the issuance of a certificate of naturalization in his favor once the decision becomes final;

"4. That on the basis of the said decision, upon oral petition of the applicant and on the strength of the certificate dated April 14, 1945, one by Honorable Sixto de la Costa, Solicitor-General of the Republic of the Philippines, and the other by Macario M. Ofilada, Acting Assistant Clerk of the Honorable Court, the applicant

was allowed on the same date to take the oath of allegiance before Judge Arsenio P. Dizon of the Court of First Instance of Manila, Branch II; and as result thereof the proper naturalization certificate was issued to the applicant by the Clerk of this Honorable Court on April 16, 1945;

"5. That on April 17, 1945, the said Judge Arsenio P. Dizon *motu proprio*, ordered and directed the cancellation of the oath and the certificate of naturalization referred to in paragraph 4, on the ground that before the applicant could legally take the oath of allegiance, the records of the case which had been burned or lost sometime in February, 1945, must first be reconstituted in accordance with law;

"6. That upon motion of the applicant dated April 24, 1945, and the submission of an authentic copy of the decision rendered by Honorable Roman A. Cruz on September 11, 1944, this Honorable Court on April 30, 1945, declared the records of these proceedings as reconstituted, and allowed the applicant to take the prescribed oath of allegiance and the Clerk of this Honorable Court to issue the corresponding certificate of naturalization;

"7. That on April 30, 1945, the applicant took the prescribed oath of allegiance before this Honorable Court, and on the same date the certificate of naturalization was issued to him by the Clerk of this Honorable Court;

"8. That Carlos Palanca during the period of enemy occupation, holding himself before the public as a citizen and subject of Spain, a country which is Pro-Axis in sympathy, was president of the "ASOCIACION CHINA PRO-NIPONA", an association which, from its very name, was engaged, among other things, in collecting contributions, especially of money, for the support of the Japanese Imperial Army and to which he himself gave a personal contribution of P60,000; and that as a consequence of his sympathy, work, aid and support of the enemy, he enjoyed privileges from the Japanese Military Authorities, especially by way of a big alcohol quota for his distillery;

"9. That the facts alleged in the paragraph immediately preceding are supported by the affidavit of Maria Teresa Palanca Cuartero (Teresa del Rio) hereto annexed as "Annex A-1", and that of Benigno del Rio, hereto annexed as "Annex A-2", both of which are attached as integral parts hereof;

"10. That Carlos Palanca was at one time confined in Bilibid Prisons from 1896 to 1899, as shown by the following:

"(a) 'Se ha recibido en este Establecimiento al Chino Carlos Palanca Tan Tiao Jun alias Tan Guin Lay en clase de preso provisional a disposicion del Juzgado de la Instancia de Binondo a resultas de la causa No. 7766 por estafa y falsificacion de documento mercantil, segun mandamiento de dicho Juzgado.

" 'Bilibid, 29 de agosto de 1896.

" 'El Alcalde 1.o

" '(Fdo.) MANUEL GARCIA'

" 'COPIADO del folio 377 del Expediente de la Causa Criminal No. 7765 del Juzgado de 1.a Instancia de Binondo.'

"(b) 'I certify that the records in this office shows that Carlos Palanca Tan Tiao Jim known by the name of Tan Guin Lay, charged with "Estafa" and "Falsification" was received for confinement at this Prison, on July 7th 1896, by order of the Court of First Instance of Binondo, Manila, P. I., and was released on April 13th, 1899.

" '(Sgd.) GEO. N. WOLFE

" 'Warden'

which fact was not brought out to light in the proceedings originally had in this case, thus making the naturalization certificate issued to him, one that is fraudulently procured;

"11. That, considering the sympathies and activities of Carlos Palanca during the period of enemy occupation, he had demonstrated that he had not 'evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos'; that he has not conducted himself in an "irreproachable manner in his relation with the constituted government"; and that he is not loyal to the Commonwealth Government of which he desires to be citizen; all of which facts, under the provisions of law, disqualify him from becoming a citizen of the Philippines and consequently render the certificate of naturalization issued to him revocable for being fraudulently and illegally procured;

"12. That the grant of citizenship by naturalization to the applicant, Carlos Palanca, by the Japanese-controlled government being merely a privilege purely political in nature, conferred no vested rights, and cannot be given force and effect beyond the life of the authority from which it emanated;

"13. That only the Commonwealth Government has power and authority to decide who should become naturalized citizens of the Philippines and entitled to its protection in return for their allegiance thereto; consequently the courts of the Japanese-controlled Republic of the Philippines has neither the authority nor the right to decide and determine who should be naturalized citizens of the Commonwealth of the Philippines;

"14. That, as a matter of public policy the herein applicant who formally and solemnly affirmed, on July 29, 1944, that he was neither hostile nor an enemy of the Japanese Empire should not be admitted to Philippine citizenship, especially considering that the Philippines is still at war with Japan;

"15. That, as against the Commonwealth of the Philippines, the decision of Judge Roman A. Cruz of September 11, 1944, and the certificate of naturalization issued in pursuance thereof, are null and void and without any legal force and effect; and

"16. That the certificate of naturalization issued to the applicant, Carlos Palanca, is illegal on the further ground that he does not and did not possess that moral character above reproach which is required by law as of the qualifications for citizenship by naturalization.

Wherefore, it is respectfully prayed that the decision of Judge Roman A. Cruz promulgated on September 11, 1944, and the certificate of naturalization issued to Carlos Palanca be cancelled, set aside and declared without any legal effect.

Manila, August 8, 1945.

"(Sgd.) LORENZO TAÑADA

"Acting Solicitor General

"(Sgd.) PEDRO S. REYES

"Acting Solicitor"

Upon the facts in this case, it seems unnecessary to engage in a fruitless long discussion and interpretation of the Treaty of Paris and applicable legal provisions. The proceedings which took place in the lower court appears to be highly anomalous. What Palanca failed to obtain by direct procedure, was granted to him in an indirect way.

There is no question as to his Spanish citizenship. He was of that firm conviction even after he obtained in 1944 a decision allowing him to be registered as a naturalized Filipino. On April 12, 1945, he stated in a public document, one of the most solemn that he could ever execute, his marriage contract with his present wife Rosa Gonzales, his Spanish nationality.

Carlos Palanca, as we can deduce from his own testimony and the record, is a very intelligent person. He is and has been assisted by competent counsel. When he filed his application for naturalization, he did it with the assistance of counsel. That years after he filed said application, after he succeeded in obtaining favorable decision, after obtaining the corresponding certificate of naturalization, and after the Solicitor General had moved for the

cancellation of said certificate, he discovered that he was already a Filipino citizen before applying for naturalization, is a thing that can hardly have its parallel in judicial history. That a court of justice should countenance such a belated discovery is, at least, surprising.

Appellant impugns the appealed order for the error of holding Palanca a Filipino citizen by virtue of the Treaty of Paris and Acts of the United States and of the Philippines and for not holding that, if he ever had that citizenship, he had lost it.

In support of the above propositions, the following able argument is adduced in appellant's brief:

"Being closely related with each other, these will be discussed jointly.

"The treaty of Paris of December 10, 1898, between the United States and Spain, provides:

"1. 'ARTICLE IX. Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

'The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.' (Pub. Laws, Vol. 1, pp. 1049-1050).

"Pursuant to the foregoing treaty provision, the Congress of the United States enacted the Act of July 1, 1902, otherwise known as the Philippine Bill, section 4 of which provides:

" 'SEC. 4. That all inhabitants of the Philippine Islands, continuing to reside therein who are Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the treaty of peace between the United States and Spain signed at Paris December tenth, eighteen hundred and ninety-eight (Put. Laws, Vol. 1, pp. 1056-1057.)

"When the Congress of the United States by law on August 29, 1916, provided for a more autonomous government in the Philippines, it reiterated the provisions of section 4 of the 'Philippine Bill', as amended on March 23, 1912, in its definition of citizens of the Philippine Islands:

" 'SEC. 2. That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety-eight, and except such others as have since become citizens of some other country: Provided, that the Philippine Legislature, herein provided for, is hereby authorized, to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residence therein.' "(Public Laws, Vol. 12, p. 238.)

"And when the Commonwealth of the Philippines came into being, its Constitution, adopted on February 8, 1935, declared the following, among others, as citizens of the Philippines:

" '(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.' (Article IV, sec. 1, subsection 1, Constitution of the Philippines).

"The same Constitution provides that 'Philippine citizenship may be lost or reacquired in the manner provided by law'. (Art. IV, section 2, Constitution of the Philippines). Acting upon this provision, the National Assembly enacted Commonwealth Act No. 63 which took effect upon its approval on October 21, 1936, providing for certain and definite ways of losing or requiring Philippine citizenship. (See Com. Act No. 63, Public Laws of the Com., Vol. I, pp. 418-419). Prior to the date of the passage of said Act, no definite rule was prescribed by legislative enactment upon the subject of expatriation, but then it was judicially recognized that, even in the absence of such an enactment, denationalization or expatriation could occur and take effect. Thus, this Honorable Court, in the *Roa vs. Collector of Customs*, 23 Phil. 315, 323, said;

" 'The right of expatriation is a natural and inherent right of all people (Act of Congress, July 27, 1868). Expatriation is the voluntary renunciation or abandonment of nationality and allegiance. The Act of Congress of 1868 does not define what steps must be taken by a citizen before it can be held that he has become denationalized. In fact, there is no mode of renunciation of citizenship prescribed by law in the United States. Whether expatriation has taken place in any instance in that country must be determined by the facts and circumstances of the particular case. No general rule that will apply to all cases can be laid down. Once a person becomes an American citizen, either by birth or naturalization, it is assumed that he desires to continue to be a citizen of the United States, and can regain his lost citizenship only by virtue of the same laws, aid the same formalities, and by the same process by which other aliens are enabled to become citizens.' "

"And in order that loss of citizenship may take effect, it has been held that no actual or express renouncement is necessary.

"The lower court in his decision said:

" 'The petitioner, having been born in the Philippine Islands and being a citizen, does not cease to be such citizen at law until such time as he has taken steps to renounce his allegiance as such citizen.'

" 'This assumption of law is not in conformity with the actual decisions. No actual or express renouncement of citizenship is necessary' (*Lorenzo vs. McCoy*, 15 Phil., 559, 590).

"In the light of the foregoing restatement of the law on Philippine citizenship and jurisprudence on denationalization or expatriation, we believe and so submit that appellee has never been a citizen of the Philippines; and that if he ever was at all, he had lost that status before the adoption of the Constitution on February 8, 1935. This we shall presently show.

"A. Appellee has never been a citizen of the Philippines.

"Appellee herein is neither a 'native inhabitant' of the Philippines on native inhabitant from Spain to the United States (articles 3 and 9 of the Treaty of Paris)' (*Roa vs. Collectors of Customs*, 23 Phil., 331, 336; *In Re Bosque*, 1 Phil., 89-90).

"If he were a Spanish subject, 'native of the Peninsula', under the terms of Article IX of the Treaty of Paris, he had the option to remain in the Islands or to remove therefrom, in case he chose to remain, again he had the option of preserving his allegiance to the crown of Spain in the manner and within the time prescribed. Whichever way he followed, there could be no question as to his status, for it has been held that:

" 'With respect' to these the special agreement contained in article 9 was established by virtue of which it was agreed to accord them the right of election to leave the country, thus freeing themselves of subjection to the new sovereign, or to continue to reside in the territory, in which case the expiration of the term of eighteen

months without their making an express declaration of intention to retain their Spanish nationality resulted in the loss of the latter, such persons thereby becoming subjects of the 4i new sovereign in the same manner as the natives y of these Islands." (in *Re Bosque*, 1 Phil., 89).

"But appellee had the peculiar position of being neither one nor the other, he being a Chinese, naturalized as Spanish subject, residing in the Philippines at the time of its cession from Spain to the United states. No case similar to his has ever been decided. In the past. In applying the provisions of the various Acts of the United States Congress respecting Philippine citizenship to the case at bar, we cannot escape reference to the provisions of Article IX of the Treaty of Paris which, as between the high Contracting Parties, is the law regulating the transfer of allegiance of the Inhabitants of the territories ceded in said treaty from Spain to the United States,

"1. "The relations which the inhabitants of ceded territory shall bear to the acquiring state are generally determined by the treaty of cession. Every treaty of cession to which the UnTted States has been a party, with the expection of the Treaty of Peace of 1898 with Spain, ceding Porto Rico and the Philippine Islands to the United States, contain a stipulation providing that the inhabitants of the territory ceded may in whole or in part become citizens of the United States either immediately or under certain conditions. In the Treaty of Paris the high contracting parties agreed that the civil rights and political status of the native inhabitants of the Philippine Islands shall be determined by the Congress of the United States. The contracting parties further agreed that all Spanish subjects, natives of the Peninsula, * * *.' (*Roa vs. Collector of Customs*, 23 Phil., 315, 332-333, italics supplied.)

"In the Treaty of Paris, it was stipulated between the Contracting Parties that 'the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress' (par. 2, Art. 9, *supra*). Said Congress, subsequently, by various enactments deemed and held as citizens of the Philippine Islands all inhabitants thereof who were Spanish subjects answers residing therein on April 11, 1899,including their children born subsequent thereto (sec. 4, Act of July 1, 1902, amended later by Act of March 23, 1912; sec. 2, Act of August 29, 1916, *supra*).

"While it is true that each sovereignty has inherent and absolute power to determine for itself who shall be its citizens (*Roa vs. Collector of Customs*, 23 Phil.. 315; 321; *U. S. vs. Wong Kim Ark*, 169 U. S. 601, 668), yet when one sovereign nation has voluntarily, upon mutual considerations, bound itself by solemn stipulation in a treaty entered into with another, as in this case, to the effect that itlshould determine the political status of the native inhabitants of the territories ceded to it by the other, it may no longer, in that particular instance at least, in the exercise of its absolute sovereign rights, determine the political status of all inhabitants without limiting itself to the native inhabitants.

"In the interpretation and application, therefore, of the, term 'inhabitants' as used in the various Acts of Congress, considered in subordination to the Treaty of Paris, that term should be taken as intended to mean only the 'native inhabitants'. As appellee is definitely not a 'native inhabitant' of the Philippines, he does not, we submit, come within the definition of citizens of the Philippines under the various Acts of Congress.

"B. If appellee ever was a citizen of the Philippines, he had already lost that status.

"Admitting arguendo that appellee became a citizen of the Philippines by operation of the Treaty of Paris and the various Acts of the Congress of the United States, we contend, and so submit, that he had lost that status long before the adoption of the Constitution on February 8, 1935.

"We have shown that the statutory requirements for the loss of Philippine citizenship existed for the first time only since October 21, 1936, when Cottaonwealth Act No, 63 was enacted to implement the provisions of section 2, Article IV of the Constitution adopted on February 8, 1935. It is not our claim in the case at bar that appellee lost his Philippine citizenship after the adoption of the Constitution, in which event it would be necessary to

establish that he, by his conduct or attitude, had lost such citizenship by any of the ways mentioned in Commonwealth Act No. 63.

"We do claim, however, that the undisputed facts in this case unmistakably point to an unbroken course of conduct on the part of appellee for a long period of time prior to the adoption of the Constitution, which course of conduct amounted to a renunciation and abjurement of his Philippine citizenship, his domicile in the Philippines notwithstanding. Certainly, as to this particular segment of time in the life of appellee, in determining whether he had, by his attitude and conduct, effected a renunciation of his citizenship, we cannot apply, as the trial court did, the provisions of Commonwealth Act No. 63 in relation to section 2, Article IV of the Constitution without giving them retroactive effect, which is not authorized.

"As we have already stated before, expatriation or renunciation of Philippine citizenship, prior to the adoption of the Constitution, was possible and could take effect, even in the absence of express or actual renouncement (*Roa vs. Collector of Customs*, supra; *Lorenzo vs. McCoy*, supra).

"All these long years appellee has resided in the Philippines, not as a citizen, not with the sentiments of a citizen, but as a foreigner, with the sentiments of a foreigner. He has lived here thus, in war and in peace, exempt from the duties and obligations of a citizen. He must have never dreamed for a moment that he was a Filipino. But now, after such a long period of time, he claims Philippine citizenship under the Treaty of Paris and the various Acts of the United States Congress. Citizenship is not just a mere cloak that may be laid aside for years, only to be picked up for use as occasion suits.

" 'While domicile, and the intent necessary to establish domicile, are in many cases determinant of questions of expatriation, they do not govern where statutory conditions of expatriation exist, such as repatriation by performance of military service or the taking of an oath of allegiance. Nor do they govern where it appears that aside from them there exist a course of conduct which involves a renunciation of American citizenship', (*U. S. vs. Longo*, 46 F. Supp. 170, 174, italics supplied).

" 'The question of expatriation, like that of domicile, so far as it depends on the citizen's will, is to be decided *ex facto et animo*'. (*Alsberry vs. Hawkins*, 9 Dana, 177, 33 Am. Dec. 546, 549).

" 'Clearly, a mere after-thought, created by personal expediency, cannot be enough (to overcome presumption of expatriation). Such would make American citizenship a mere travesty instead of the high privilege that it is, and must always remain. (*Shaufus vs. Atty. Gen.*, 45 P. Supp. 61, 67).

"Appellee's application for naturalization in 1941 and his registration as a Spanish national with the Spanish Consulate General in Manila, indeed, strengthen our contention that he had, in fact and intention, divested himself of his Philippine citizenship. His conduct (see Rec. of App. pp. 52-58) plainly indicates that he did not consider himself bound by the obligations inherent to the Filipino citizenship he now claims.

"We believe, therefore, that appellee had, prior to the adoption of the Constitution, effected implicitly a renunciation of his Philippine citizenship, if he had that status; and in submitting this question to this Honorable Court we are confident that it will not lose sight of the superior interest of the State against claimants for citizenship.

" 'Citizenship is a high privilege, and when doubts exist concerning a grant of it, generally at least, they should be resolved in favor of the United States and against the claimant' " (*U. S. vs. Manzi*, 276, U. S. 463, 467; 48 S. Ct. 328, 329; 72 L. 9d. 654).

"C. Therefore, appellee is not a citizen under the Constitution.

"If appellee was not a citizen of the Philippines by virtue of the Treaty of Paris and the Acts of the United States

Congress; or being a citizen thereunder, he had lost such status prior to the adoption of the Constitution, he can no longer be deemed a citizen of the Philippines under the provisions of section 1, Article IV of said Constitution."

There is no necessity for us to show whether Palanca is still a Spanish citizen or has reverted to his original Chinese citizenship. The important thing is that he is not a Filipino citizen. No amount of legal logodaedaly may erase the stark reality that when he applied for Philippine citizenship, in everybody's conscience, in the conscience of his counsel, and in his own conscience, there was the unbreakable conviction that he was not a Filipino citizen. No one would think that the naturalization proceedings instituted by him had been started with the purpose of performing in a judicial stage an expensive and troublesome farce. That, in order to sidetrack the frontal attack made by the Solicitor General against his certificate of naturalization, he found it expedient to adopt the theory that he did not need to be naturalized, because he is a Filipino citizen and he was so even before he applied for naturalization, is an able strategy that should not deceive courts of justice and induce them to give an imprimatur to a legal comedy.

We vote that the appealed order of January 7, 1946, be set aside and the lower court instructed to proceed with the hearing on the petition for cancellation of the certificate of naturalization issued to appellee and that, upon said evidence, to decide the question according to the facts as it may find.

DISSENTING

HILADO, J.:

I have the misfortune to disagree with the majority of my brethren in their holding that Carlos Palanca, petitioner-appellee, was a Filipino citizen upon the date of his application for naturalization under Commonwealth Act No. 473. In my opinion, he was a Chinese citizen at that time.

Petitioner-appellee, a native born subject of the former Empire of China, became a naturalized Spanish subject by virtue of the Royal Decree of the Regent, Queen Maria Cristina, of November 30, 1893. Upon the date of said decree, he was already residing in the Philippines, where he arrived in 1884. The Spanish-American War of 1898 came, and after the defeat of the Spanish forces the Treaty of Paris was negotiated and concluded on December 10, 1898. In due time the exchange of ratifications of said treaty took place.

In Article IX of said treaty it was provided as follows:

"Spanish subjects, natives of the Peninsula, residing in the territory over which, Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their Industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

"The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."(italics supplied).

It appears from the first paragraph of the above quoted article that the High Contracting Parties expressly stipulated how the "Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty", might preserve their allegiance to the Crown of Spain, or

lose that allegiance and be held to have adopted the nationality of the territory in which they might reside. In the second paragraph of the same article the High Contracting Parties also agreed that the civil rights and political status of the "native inhabitants of said territories hereby ceded to the United States shall be determined by the Congress" (of the United States).

It is significant that the High Contracting Parties did not make any express stipulation regarding the political status, citizenship, or allegiance of the inhabitants, not "natives of the Peninsula" nor "native inhabitants of the territories". In other words, they refrained from providing in the treaty for the political status of all other inhabitants of said territories. Among those other inhabitants of the Philippines was Carlos Palanca. This, perforce, leads me to conclude that the High Contracting Parties agreed to let the recognized rules of international law govern as the political status, citizenship, or allegiance of this latter group of inhabitants, instead of agreeing that the Congress of the United States shall determine their political status. Section 4 of the Philippine Bill, and Section 2 of the Jones Law, should be construed as exclusive of them.

Otherwise stated, my construction of the treaty is that the High Contracting Parties agreed to exclude from what would have been the ordinary operation of international law as regards the political status of the territorial inhabitants: (1) those Spanish subjects who were natives of Spain and (2) the native inhabitants of the territories. All others were to be subject to the rules of international law.

In *Roa vs. Collector of Customs*, 23 Phil. 315, 332-333, this Court said:

"The relations which the inhabitants of the ceded territory shall bear to the acquiring state are generally determined by the treaty of cession. * * *".

That determination was made in Art. IX, 1st paragraph, of the Treaty of Paris, as to the "Spanish subjects, natives of the Peninsula", and agreed to be made, under the 2nd paragraph of the same Article, by the Congress of the United States thereafter. As to the rest of the territorial inhabitants who owed Spain natural allegiance based "upon the law of nature and the code of nations" (*Tobin vs. Walkinshaw*, 23 Fed. Cases, 1346, 1348), International Law fixed their political status, as declared by Chief Justice Marshall in *American Insurance Co. vs. 356 Bales of Cotton*, 1 Pet. (U.S.) 511, 7 Law ed. 242, 255, as follows:

"* * * On such transfer of territory, it has never been held that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country, transfers the allegiance of those who remain in it. * * *".

Such transfer of allegiance, being independent of the will of the inhabitants concerned, logically refers to that allegiance which attached to them in the first instance independently of their personal volition. This does not include naturalized citizens without whose voluntary choice and election would never have become such citizens of the country of adoption nor owed it allegiance. The citizenship and allegiance of such is a pure creature of the municipal law of the country of adoption. The country of adoption had the power under its municipal law to admit him to naturalized citizenship, but if that country should in future cede the territory to another power, the naturalized citizen who remains in the territory is thereby released from his voluntary allegiance to the ceding power, and the citizen is remitted to his original status (*Tobin vs. Walkinshaw*, *supra*). Consequently, said ceding power cannot transfer the allegiance of said citizen to the acquiring power.

As said In the *Tobin* case,

"* * * No power existed in one government to transfer, or in the other to receive, the voluntary or statutory allegiance of a naturalized citizen. * * *"

I, therefore, adhere to that doctrine that under International Law the contracting parties to a treaty ceding territory from one sovereign to another can not subject to their agreement the citizenship, political status or allegiance of those inhabitants of the ceded territory who at the time of the cession were naturalized citizens of the ceding power. The contracting parties can only stipulate regarding the citizenship of those who owed allegiance to the former sovereign by the "law of nature and the code of nations", as held in the Tobin case above cited (p. 1348):

"* * * The allegiance of the naturalized citizen is the offspring of municipal law. Unlike natural allegiance, its support does not rest upon the law of nature and the code of nations. The only relations that Mexico or the United States could change, were those arising from those sources. Nor does the language of the treaty authorize the conclusion that the contracting parties intended to include within the word 'Mexicans' naturalized citizens of foreign countries. * * *"

In the cited case, the Circuit Court for the Northern District of California was construing the 9th article of the Treaty of Guadalupe Hidalgo between the United States and Mexico, which is remarkably similar in its terms and provisions to Article IX of the Treaty of Paris between the United States and Spain hereinbefore referred to. As in said Article 9 of the Treaty of Guadalupe Hidalgo, in Article IX of said Treaty of Paris, naturalized Spanish citizens are nowhere included *co nomine*.

As stated above, Carlos Palanca was, in my opinion, a naturalized Spanish citizen at the time the Treaty of Paris went into effect. He became such citizen purely by voluntary choice, unlike his natural citizenship and allegiance to the former Empire of China, which attached to him upon his birth and wholly independently of his will. It was exclusively by an act of his will that he applied for naturalization as a Spanish citizen. He became one because he chose Spain as the country to which he wished to render allegiance thereafter, with or without a mental reservation of his right of expatriation.

It seems to me naturally to follow from this that it was altogether beyond the power of Spain to transfer his allegiance and citizenship to the United States, or to subject them to the power of the United States Congress to determine, quite apart from the admitted power of the new sovereign to exclude him from the ceded territory under any circumstances determined by the new sovereign. I am of opinion that, because he was not a natural but merely a naturalized citizen of the former sovereign, he was remitted to his native citizenship upon the cession of the territory to the acquiring state.

Petitioner-appellant's remission to his native citizenship was, like his original native citizenship itself, of course independent of his will, — and regardless of whether he knew it or not. That even as late as the Japanese occupation he still considered himself a Spanish citizen would not argue against this, just as it is in effect held by the majority that such fact did not argue against his being a Filipino citizen upon the date of his application for Philippine naturalization.

At any rate, since petitioner-appellant was neither a "Spanish subject, native of the Peninsula", nor a "native inhabitant of the territory", it would seem to be clearly beyond the power of the United States Congress to determine or regulate his citizenship and allegiance.

It is well settled that

"* * * In the United States, however, a treaty is more than a contract between nations; by force of the provision of the federal constitution that this constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding, subject to certain limitations hereafter set forth, a treaty has operative force as part of the supreme law of the land, is binding on the courts, federal and

state, stands on the same footing of supremacy as the constitution and laws of the united States, * * *". (63 C. J., 827-828 and supporting cases; italics supplied).

Hence, even if the Congress of the United States had expressly mentioned *co nomine* naturalized Spanish citizens in Section 4 of the Philippine Bill and Section 2 of the Jones Law, in my opinion, such provision would have been unconstitutional and void, because not warranted by the Treaty of Paris.

Granting, for the sake of argument, however, that Carlos Palanca was once a Filipino citizen, the record seems plainly to reveal that he had, prior to the adoption of the constitution, expatriated himself, and for that reason he was not such citizen when the constitution was adopted. As well argued by the Solicitor General (brief pp. 16-18)

"We do claim, however, that the undisputed facts in this case unmistakably point to an unbroken course of conduct on the part of appellee for a long period of time prior to the adoption of the Constitution, which course of conduct amounted to a renunciation and abjurement of his Philippine citizenship, his domicile in the Philippines notwithstanding. Certainly, as to this particular segment of time in the life of appellee, in determining whether he had, by his attitude and conduct, effected a renunciation of his citizenship, we cannot apply, as the trial court did, the provisions of Commonwealth Act No. 63 in relation to section 2, Article IV of the Constitution without giving them retroactive effect, which is not authorized.

"As we have already stated before, expatriation or renunciation of Philippine citizenship, prior to the adoption of the Constitution, was possible and could take effect, even in the absence of express or actual renouncement (*Roa vs. Collector of Customs*, *supra*; *Lorenzo vs. McCoy*, *supra*).

"All these long years appellee has resided in the Philippines, not as a citizen, not with the sentiments of a citizen, but as a foreigner, with the sentiments of a foreigner. He has lived here thus, in war and in peace, exempt from the duties and obligations of a citizen. He must have never dreamed for a moment that he was a Filipino. But now, after such a long period of time, he claims Philippine citizenship under the Treaty of Paris and the various Acts of the United States Congress. Citizenship is not just a mere cloak that may be laid aside for years, only to be picked up for use as occasion suits.

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"Appellee's application for naturalization in 1941, and his registration as a Spanish national with the Spanish Consulate General in Manila, indeed, strengthen our contention that he had, in fact and intention, divested himself of his Philippine citizenship. His conduct (See Rec. of App. pp. 52-58) plainly indicates that he did not consider himself bound by the obligations inherent to the Filipino citizenship he now claims.

"We believe, therefore, that appellee had, prior to the adoption of the Constitution, effected implicitly a renunciation of his Philippine citizenship, if he had that status; and in submitting this question to this Honorable Court we are confident that it will not lose sight of the superior interest of the State against claimants for citizenship.

" 'Citizenship is a high privilege, and when doubts exist concerning a grant of it, generally at least they should be resolved in favor of the United States and against the claimant' (U.S. vs. Manzi, 276 U. S., 463, 467; 48 S. Ct., 326, 329; 72 L. (ed.) 654).' "

Briones, J., I concur in this very able dissenting opinion of Mr. Justice Hilado.

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