

JOHNNY CHAUSINTEK, PETITIONER AND APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT.

G. R. No. L-2755. May 18, 1951

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal interposed by the Solicitor General in behalf of the Republic of the Philippines from the decision of the Court of First Instance of Bulacan granting the petition for naturalization as citizen of the Philippines filed by the appellee Johnny Chausintek. The decision reads in part as follows:

"Practicadas las pruebas se ha probado por medio de la declaracion de dos testigos Don Emilio Rustia, ex-Gobernador de Bulacan y el abogado Arcadio Ejercito, un hombre prominente de esta provincia, que conoeen al solicitante desde el aiio 1934 cuando se caso con su presente esposa Martina Tionson Rustia, Filipina, y desde entonces dicho solicitante con su esposa pasaron a vivir y residir en el municipio de Baliuag de esta provincia de Bulacan; y que el solicitante es de caracter intachable y moralidad conocida gozando una buena reputacion entre los habitantes de Baliuag y que desde cuya fecha hasta la presentation de la solicitud estuvo residiendo en estas Islas sin interrupción alguna habiendo terminado hasta el Quinto Grado en la Escuela 'National School', Manila; despues en la Intermedia de la Escuela Publica de Meisic School, y tambien estudio en el Normal High School y curso el estudio del Comercio en Jose Rizal College. Que es corduefio y Manager de la farmacia 'Paramount Drugstore' con un capital de P66,000, P31,000 de los cuales pertenecen al solicitante, teniendo el mismo un ingreso anual de cerca de P10,000.

"Se ha probado, ademas, que dicho solicitante ademas de poseer y hablar el dialecto tagalo, habla y escribe asimismo el lenguaje Ingles y se ha demostrado por la declaration del solicitante durante la vista que el esta enterado de la historia de Filipinas y de sus instituciones y que el solicitante por sus 37 afios de residencia continua aqul esta familiarizado en su forma de gobierno y su Constitution, habiendo adquirido afeccion a esta Republica, y que sus seis hijos todos nacidos aqui a Filipinas han estudiado, cursan y estudian actualmente en las escuelas privadas autorizadas por el Gobierno en donde se ensefia historia de Filipinas, sus sistema de Gobierno. Se ha demostrado, ademas, que el solicitante ha estado asociado con los residentes del municipio de Baliuag, Bulacan, y esta identificado en nuestras costumbres, tradiciones e ideales y que durante la ocupacion ha dado ayuda material apoyo moral a los grupos de resistencia contra el enemigo.

"En cuanto a su residencia o domicilio, el solicitante corroborado

por los testimonios de los dos testigos he probado que no obstante su estancia en los ultimos tres afios en la ciudad de Manila debido a sus negocios, sin embargo, dicho solicitante nunca ha intentado residir permanentemente en la ciudad de Manila y mucho menos el referido solicitante he tenido intention de abandonar su antiguo domicilio o residencia en el municipio de Baliuag de esta provincia de Bulacan. Tambien se ha probado que las leyes de China, una copia certificada de la cual obra unida en I03 autos, reconoce reciprocidad al ciudadano Filipino para adquirir ciudadania China por naturalizacion."

Attorney for the appellant in his brief assigns two errors of the lower court: (1) that the residence for at least one year immediately preceding the filing of the petition in the Court of First Instance of the province in which the

appellee filed his petition, required by law, is not legal but actual residence, and therefore the lower court has no jurisdiction to take cognizance of the appellee's petition; and (2) that the appellee is not in a position to renounce effectively his present nationality as required by article 11, Chapter III of the Chinese Law of Nationality, which provides that "One who wishes, upon his own will, to acquire the nationality of a foreign country may, with the permission of the Ministry of the Interior, renounce the nationality of the Chinese Republic * * *."

As to the first assignment of error, the court a quo did not err in deciding that it had jurisdiction to hear and grant the appellee's petition, and denying the appellant's motion to dismiss based on the same ground on which this assignment of error is predicated. This Court in the matter of the petition of Frederik Edward Gilbert Zuellig vs. Republic of the Philippines, 46 Off. Gaz., Supp. (11), 220 in which the same question was raised, held the following:

"The only questions raised in this appeal by the Government are: that the Court of First Instance of Rizal had no jurisdiction to entertain the petition for the reason that the applicant Zuellig had not resided in the municipality of Pasay (now Rizal City) for at least one year preceding the filing of his petition on September 11, 1946 * * *."

"As regards the residence of the applicant, it is not exactly correct, as stated by the Solicitor General in his brief, that the applicant had resided in Manila since 1938, until the filing of his petition. On the contrary, the evidence shows that since 1938, when the applicant arrived in the Philippines, he had been residing continuously in Pasay at No. 3 Meadowbrooklane Street until the year 1944 when he was ejected from his house by the Japanese armed forces, for which reasons he had to leave Pasay and leave for a short time in Malate, later on going to Baguio to stay there until the city was liberated in 1946; that when he returned to Pasay after liberation, he found his house at Meadowbrooklane damaged and not habitable, for which reason he was compelled to live at No. 1331 Pennsylvania, Manila, but that his residence in Manila was temporary and that he had always intended to rehabilitate or rebuild his house in Pasay in order to resume his residence there,

"* * *We find it unnecessary to cite authorities about domicile and residence, it being of universal acceptance that once domicile, or residence is established, the same continues, and that, before a resident may acquire a new residence, he must abandon his established residence and reside in his new one with the intention of residing therein permanently and without any intention of returning to his old residence. In the present case, we hold that the applicant did not lose his residence in Pasay (now Rizal City), his residence in Manila being of a temporary character, and only until he shall have rehabilitated in his house in Pasay."

The second assignment of error does not deserve serious consideration, because it was not raised in the lower court and cannot be raised here for the first time. The evidence and contents of a foreign law is a fact that must be alleged in time and proved if material; and no evidence thereof may be presented and admitted in this Court on appeal. The provisions of section 48 of Rule 48, in connection with section 1, Rule 58 of the Rules of Court are applicable to naturalization proceeding by analogy and in a suppletory character, for they are not inconsistent with the provisions of the Naturalization Law (Rule 132, Rules of Court). Therefore, the contention that it was not necessary for the appellant to raise in the court below the question he now raises, since "no formal answer is required to be made in a naturalization proceeding on behalf of the Government, and the applicant's petition raises all relevant issues and the burden is upon him to prove his right to naturalization," is without merit, because the taking of an oath of allegiance to the Republic of the Philippines is only a requirement before the naturalization certificate is issued to the petitioner, and there is nothing in the Naturalization Law requiring the appellee to allege in his application, and prove during the hearing thereof, that he had previously obtained permission from the Ministry of the Interior of the Chinese Republic to renounce his former nationality.

In view of the foregoing, the decision appealed from is affirmed without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor and Jugo, JJ., concur.

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