

**REPUBLIC OF THE PHILIPPINES, MOVANT-APPELLANT, VS.
FRANCISCO COKENG, RESPONDENT-APPELLEE.***G.R. No. L-19829. May 04, 1968*

Ponente: REYES, J. B. L., Acting C.J.

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REYES, J. B. L., Acting C.J.:

Respondent-appellee Francisco Cokeng seeks reconsideration of this Court's decision in the above entitled case, ordering the revocation of his certificate of naturalization (17 Sup. Ct. Rep. Annot., p. 853). Bases of the decision were that in the original application for naturalization, said respondent failed to state all his former places of residence; and lack of good moral character and irreproachable conduct, rendering the naturalization one that was illegally obtained (Com. Act No. 473, sec. 18).

With regard to the first ground, this Court's main decision found that appellee, in addition to his given address at 428 Sto. Cristo, Manila, had also resided at 28 12th Street, corner Broad-way, Quezon City, but had not revealed it in the amended application for his naturalization that was the one published as required by law.

That the appellee Cokeng had resided in the house in Quezon City is indubitable, as it appears manifested by him in several public documents executed between 1951 and 1954, as detailed in our decision. Some of these were even sworn to by him (Exh. A and Exh. SSS, for example). His explanations, that in some of said documents the residence in Quezon City was set down by mistake, or that it was an address and not a residence, or that he had purchased it for his parents, were examined and found unconvincing and not acceptable.

In his motions for reconsideration, the appellee stresses that in law a person can only have one legal domicile, and that appellee, in good faith, only made it appear in his application for naturalization that his residence was 428 Sto. Cristo, Manila, because it was there that he stayed most of the time. These arguments are unmeritorious. It is noteworthy that section 7 of the Naturalization Law expressly requires the applicant to state his "present and past places of residence", and the words used in the statute clearly show that the term used ("residence") was not employed in the sense of "legal domicile", precisely because a person can only have one domicile. Considering the purpose of the requirement, which is to enable the public and the investigating agencies of the government to gather all formation available as to the conduct of an applicant, and thus determine whether his behavior at all times has been irreproachable as required by law, and hence, whether the prospective admission to citizenship should be objected to or not, it becomes obvious that by places of residence, section 7 of the Naturalization Law refers to the places of actual physical residence,[1] whether temporary or permanent.

In *Qua vs. Republic*, L-19834, October 27, 1964, this court said --

"Petitioner argues, however, that his residence in Manila was only temporary so that his legal residence or domicile remained to be Legazpi City. Section 7 of the Revised Naturalization Law speaks of 'present and former places of residence' without specifying actual or legal residence. Its purpose, as stated, is to give the public and the investigating agencies of the government an opportunity to gather information and to express objection relative to the petition. Precisely, for this reason, it is important that petitioner's actual, physical

residence be likewise set forth and published, since information regarding petitioner and objection to his application are apt to be provided by people in his actual, physical surrounding."

We reiterated these views in *O Ku Phuan vs. Republic*, 1967C, PHILD 570, 573,[2] where it was ruled that:

"The only former place of residence mentioned in the petition for naturalization was 1040 O'Donnell, Sta. Cruz, Manila. The record shows, however, that petitioner had resided in Davao from 1936 to 1946, at No. 788 Juan Luna, Tondo, Manila, from 1946 to 1948 and in the 2nd Avenue, Grace Park, Caloocan City, from 1948 to 1949. It is well settled that this failure to mention petitioner's former residences affects the jurisdiction of the court to hear the case.

"Indeed, such omission tends to defeat the purpose of the publication, required by law, of notice of the filing of the petition for naturalization. It deprives the Government of the opportunity to make a thorough and effective investigation of petitioner's background, prior to the hearing of his petition. Moreover, people, residing in the neighborhood, of the former places of residence not mentioned in the petition may thus be led to believe that petitioner is another person. They may, accordingly refrain from conveying to the Government pieces of information relevant, if not vital, to the petition for naturalization. For this reason, the fact that, petitioner mentioned, in his testimony, said former places of residence, does not and can not -- contrary to the import of the order appealed from -- cure the effect of the failure to specify them in his aforementioned petition.

Upon the other hand, the decisions in *Zuellig vs. Republic*, 83 Phil. 768, and *Chausintek vs. Republic*, 88 Phil. 717, discuss residence for purposes of venue for the filing of the petition for naturalization and are, therefore, inapplicable to the present issue.

Likewise obvious it is that the good faith of the applicant in omitting one or more of his "present and past places of residence" in his application, becomes and is irrelevant for the purposes of the law. Whether the omission be in good or bad faith, the fact is that full inquiry as to the irreproachability of applicant's behavior is thereby, preyed, and the law's intent frustrated. Hence, this Court in a long line of decisions has invariably held that such omission is fatal to the application for naturalization (*Lim Tan vs. Republic* April 30, 1966; *Ong Ping Seng vs. Republic*, L-19575, February 26, 1965 and numerous decisions cited therein; *Tan vs. Republic*, L-22077, February 18, 1967; *O Ku Phuan vs. Republic*, L-23406, August 31, 1967, 1967C PHILD, 570 and cases cited).

It is apparent from the preceding considerations that the act of appellee Cokeng in not disclosing his residence in Quezon City, having deprived the State of opportunity to fully inquire into the applicant's conduct, rendered the decree of naturalization improvident and improper, being contrary to the requirements and policy of the law. While the decree had become final, the State is not thereby deprived of corrective action through denaturalization proceedings for the cancellation of the naturalization certificate. For under section 18 of Commonwealth Act No. 473, "a competent judge may cancel the naturalization certificate issued and its registration in the civil registry whenever it is shown that ---- said naturalization certificate was obtained fraudulently or illegally". These terms were reproduced from the American law that allowed cancellation of naturalizations "fraudulently or illegally procured", and it has been the consistent interpretation of the Federal and Supreme Courts of the United States that the term "illegally procured" is not limited to irregularity, but also denoted a determination by the Court contrary to law of the matter submitted to it. (*U. S. vs. Nopoulos*, 225 Fed. 556; *U. S. vs. Plaistrow*, 189 Fed. 1010; *Grahl vs. U. S.*, 261 Fed. 437; *U. S. vs. Koopmans*, 290 Fed. 545; *U. S. vs. Khaw*, 1 Fed, 2d 1006; *U. S. vs. Ness*, 62 L. Ed., 321; *U. S. vs. Ginsberg*, 61 D.Ed. 853).

"No alien has the slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the government may challenge it, as provided in section 15, and demand its cancellation, unless issued in accordance with such requirements. If procured when prescribed qualifications have no existence in fact, it is illegally procured; a manifest mistake by the judge can not supply these nor render their existence non essential." (*U.S. vs. Ginsberg*, 61 Law Ed.

853, 856)

"Naturalization granted without the filing of a certificate of arrival as required by the statute, the same being a matter of substance, is illegally procured (U. S. vs. Ness, 62 L. Ed. 8

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"No alien has the right to naturalization unless he has complied with the statutory requirements. If a certificate of naturalization has been procured when the statutory qualification did not exist in fact, it may be cancelled. Proof of fraud in obtaining a certificate is necessary to justify cancellation, illegality alone all subject a certificate to successful attack." (U. S. vs. Beda, 118 Fed. 2d 458, 459, cit. U. S. Sup. Court decisions) (Emphasis supplied)

"The statute requires certain conditions to exist to entitle a person to naturalization, and no person and no bureau, and no court, can waive these conditions; therefore the government can not be estopped by anything shown in the record in this case." (U. S. vs. Nopoulos, 225 Fed. 656, cit. author.)

It can be readily seen that the lack of fraudulent intent or trickery in obtaining naturalization is no obstacle to the cancellation of a naturalization certificate originally issued in violation of law. It may be added that appellee's contention that his true residence was No. 428 Sto. Cristo, Manila, is not free from doubt, considering the evidence that these premises were under lease to Go Tian Hoo (doing business under the name of Francis Trading) from April 1951 to December 1958 (tsn. p. 31, Sept. 28, 1961; Exhs. V-I and V-II) while the petition for naturalization was filed in 1955.

The conclusion is, therefore, inevitable that the respondent has not established adequate grounds for altering the conclusions made in the main decision (17 Supreme Court Reports Annotated, p. 857) to, the effect that his failure to disclose all his places of residence justified the revocation of his naturalization.

With regard to the second ground for revocation, to wit, that respondent Cokeng had committed underdeclarations of his income, thereby evincing lack of that irreproachable conduct which the law requires of applicants for citizenship, respondent stresses that the first group of Bureau of Internal Revenue examiners had found that Cokeng overpaid his income taxes for 1952, 1953 and 1954; the second group of examiners that had gone over Cokeng's case found overpayments only for 1952 and 1954, but certified to this taxpayer's being deficient in his income declarations for the years 1953, 1955, 1956 and 1957; and still a third group of examiners in turn confirmed Cokeng's overpayments for 1952 and 1954, but reported that for the years 1953, 1955, 1956 and 1957, there was neither deficiency nor overpayment. To cap this confusing situation, respondent has submitted (See Annexes to his Motion of November 14, 1966) a report of Supervising Revenue Examiner Restituto D. Atienza, (who had originally investigated Cokeng's tax case, and assessed him for additional taxes) wherein said examiner declared, as of October 1963 that respondent had overpaid his income taxes for the years 1951, 1952 and 1954; and recommended that he be assessed for deficiency income taxes for 1958 and 1959, but without penalty, because "there is no direct evidence of fraud."

The records further disclose a memorandum dated May 8, 1967 of Commissioner of Internal Revenue Misael P. Vera, reporting to the Solicitor General,[3] that other revenue examiners had verified anew respondent's tax cases, and that -

"The examiners found no evidence in the records to show that the deficiency tax arose from undeclared income that would indicate bad faith on the part of the taxpayers, thus substantiating the conclusion and recommendation of the late Examiner Atienza as adverted to above. On the other hand, the examiners found instances showing good faith on the part of the taxpayer. He voluntarily filed, his amended returns for 1952 up to 1955, inclusive, declaring an additional income consisting of dividends from San Miguel Brewery

Corporation. This additional income has not been discovered by the team of Examiners Timoteo C. Andrade and Felix S. Lopez whose examination covered the years 1948 up to 1954, inclusive. Moreover, the amended returns were filed even before the start of the second reinvestigation, which was then not expected. The taxpayer also voluntarily filed a Supplementary Inventory, on February 14, 1956, as Administrator of the estate of his deceased father thereby increasing the estate and inheritance taxes. These acts of taxpayer, the examiners pointed out, demonstrate not only good faith but civic-mindedness long before the denaturalization case was stated sometime in 1960."

These conclusions the Commissioner confirmed and adopted, saying -

"It appearing that the examiners' findings are based on a thorough appraisal and evaluation of the records of Mr. Cokeng's tax cases, this Office finds it unnecessary to add to or detract from the said comments, which are therefore, hereby confirmed and adopted as our official answer to the questions posed in your query."

In view of these developments, we are left with no alternative but to conclude that, despite the suspicious variations in the results of the different examinations of respondent's tax cases, the second charge of underdeclarations of his income has not been clearly established, and therefore, his denaturalization ca not be predicated upon said charge.

It appearing, however, that Cokeng's naturalization was illegally obtained, because the Court granting it improperly disregarded the applicant's failure to disclose one, of his places of residence, contrary to the requirements of section 7 of the Naturalization Law, the denaturalization decreed in the original decision of this Court must be maintained.

WHEREFORE, the motion for reconsideration is hereby DENIED.

Concepcion, C.J, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.
Dizon, J., concurs and dissents in a separate opinion.
Castro, J., concurs in a separate opinion.
Makalintal, J., concurs in the opinion of J. Castro.
Angeles, J., dissents in a separate opinion.

[1] Lo vs. Republic, L-15919, May 19, 1961; Qua vs. Republic, L-1934, October 27, 1964.

[2] Citing copious precedents.

[3] Annex A, to his comment filed on May 19, 1967.

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DISSENTS IN A SEPARATE OPINION

ANGELES, J.:

It is my considered opinion that the amended petition stating that the applicant Francisco Cokeng owned a residential building situated at 12th Street, No. 28, Broadway, Quezon City, purportedly valued at P20,000.00, having been published in the issue of the Official Gazette of June, 1955, and three times in the Daily Record, a

newspaper then having general circulation, to all intents and purposes, it was a sufficient notice to give the public and the investigating agencies of the Government an opportunity to gather information and to express objection relative to the petition, which fact negates any idea of an attempt to conceal a relevant matter to the application, and it appearing that until now the State has not come forward with any adverse or derogatory evidence against him from persons who live adjoining or close to the said house in Quezon City, for this reason alone, I vote to grant appellee's motion for reconsideration.

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SEPARATE OPINION

CASTRO, J.:

Francisco Cokeng, on December 29, 1958, became a Filipino citizen through the procedure prescribed by law for naturalization; on this day he took the oath of allegiance and was issued his certificate of naturalization.

More than two years later, or more precisely on March 7, 1961, the Solicitor General instituted in the Court of First Instance of Manila, the court that granted Cokeng Filipino citizenship, a proceeding for the denaturalization of the latter, on the ground that he had obtained his certificate of naturalization fraudulently and/or illegally. More particularly it was averred (1) that he made it appear in the naturalization proceeding that he was a resident of Manila when in fact he was residing at no. 28, 12th Street, Broadway, Quezon City, and (2) that he had habitually concealed his taxable income and evaded payment of taxes due from him to the Government. The court denied the Solicitor General's motion on December 11, 1961.

On appeal by the State, this Court on July 30, 1966 re-versed, and ordered the cancellation of the certificate of citizenship upon the two grounds raised by the Solicitor General. On September 20, 1966 Cokeng filed the present motion for reconsideration.

In the resolution penned by Mr. Justice J.B.L. Reyes, the two conclusions reached by him are (1) that the denaturalization of Cokeng cannot be predicated upon the charge of underdeclaration of his income; and (2) that his denaturalization should nevertheless be ordered on the ground that his omission to state in his original application for naturalization his residence in Quezon City is fatal. With respect to the latter, Mr. Justice Reyes has this to say: "The good faith of the applicant in omitting one or more of his 'present and past places of residence' in his application, becomes and is irrelevant for the purposes of the law. Whether the omission be in good or bad faith, the fact is that full inquiry as to the irreproachability of applicant's behaviour is well thereby prevented, and the law's intent frustrated. Hence this Court in a long line of decisions has invariably held that such omission is fatal to the application for naturalization * * * the act of the appellee Cokeng is not disclosing his residence in Quezon City * * * rendered the decree of naturalization improvident and improper, being contrary to the requirements and policy of the law. While the decree had become final, the State is not thereby deprived of corrective action through denaturalization proceedings for the cancellation of the naturalization certificate. For under section 18 of Commonwealth Act No. 473, 'a competent judge may cancel the naturalization certificate issued and its registration in the civil registry whenever it is shown that . . . said naturalization certificate was obtained fraudulently or illegally.' These terms were reproduced from the American law that allowed cancellation

of naturalizations 'fraudulently or illegally procured,' and it has been the constant interpretation of the Federal and Supreme Courts of the United States that the term 'illegally procured' is not limited to irregularity, but also denoted a determination by the court contrary to law of the matter submitted to it."

With all due respect for the opinion of Mr. Justice J.B.L. Reyes, we are constrained to disagree with his conclusion that the certificate of naturalization issued to Cokeng should be cancelled, for the reasons that will hereunder be stated.

More specifically, we hold the view (1) that the resi-dential building, situated at no. 28, 12th Street, Broadway, Quezon City, and owned by Cokeng, was not a "residence" within the meaning of the word as used in the Naturalization Law; and (2) that measured by the injunction that in a denaturalization proceeding the proof of fraudulent or illegal procurement of the certificate of naturalization must be "clear, un-equivocal and convincing," the evidence in the present case does not meet this stringent requirement.

1. Although the word "residence" may have varying connotations in different statutes and situations, it is nonetheless the consensus of legal lexicographers that "residence" is the place where a person has established a home, with intention to remain thereat permanently or for an indefinite time, and implies something of permanence or continuity at least for an indefinite period, to the exclusion of other contemporaneous residence (see Words and Phrases, Permanent Edition, vol. 37, pp. 317-323). Quoting from Van Dyne's Na-turalization, Velayo, in his book Philippine Citizenship and Naturalization, p. 73, states that in its broad sense, residence "means a place of abode, selected with the inten-tion of remaining permanently or for an indefinite period." Also from Van Dyne, Velayo (p. 74) makes this explicit quotation of what the court said in the case of *In Re Hawley*, 1 Daly 531: "There are few questions that come up for the consideration of judicial tribunals which are more difficult to define than what will constitute a residence. The best definition that I have ever been able to find, or which my own experience could suggest -- and I have had a great deal -- is that to be deduced from the Roman Law -- that a man's residence is the place where his family dwells or which he makes the chief seat of his affairs and interests." In *Pe-tition of Oganessoff*, 20 F (2d) 980, the court had this to say: "While the words 'domicile' and 'residence' may be dis-tinguished for certain purposes, I think they are synonymous for the purpose of naturalization. It has often been held that they are synonymous, and I think the authorities bear out the conclusion here expressed. Statutes using these two terms have frequently been construed to this effect. * * * The presumption is that a married man's residence is where his family resides, when the family resides in a permanent home, and no separation has taken place. * * * When a residence or domicile is once acquired, it continues until a new one takes its place. It is not lost merely by temporary absence, or temporary residence elsewhere, though that may be continued for a period of years."

Reverting now to the case at bar, the record, to our mind, shows that the house in Quezon City owned by Cokeng was not a residence within the meaning given to the term "resi-dence" by the cases we have above quoted. True that the house is owned by him, but the lot on which it stands is owned by some other person. He bought the house for his ailing father who was afflicted with tuberculosis. Although he and his wife had a room in that house reserved for their use on their occasional visits to his father, nevertheless he, his wife and children actually lived for all purposes in Sto. Cristo, Manila. That the house in Sto. Cristo, Manila was the actual residence of Cokeng and his family, is proved by the mention of that place as his residence in no less than twenty-three important documents executed by him, eight of which were presented in evidence by the Office of the Solicitor General itself.

The eight documents referred to by the Solicitor General as showing that he had a second residence, indicate at best that the house he owns in Quezon City was mentioned in the said documents in the concept of a mere second address. Exhibit A is a petition for the appointment of a special administrator of the estate of Cokeng's deceased father. Attorney Federico Amacio who prepared the petition explained that he did not consider Cokeng's address material, and because he remembered the address of Cokeng's father in Quezon City, he instructed his

stenographer to place it in the petition. Exhibits B and C are the birth certificates of the two sons of Cokeng. It was obviously someone else who gave the information that was placed in the birth certificates; otherwise if it was he who did give the information, he would not have committed the errors that appear in the said certificates as to his own age as well as that of his wife. Exhibit AA is a tax declaration of the house in Quezon City, which document was prepared by the Quezon City assessor. For the purposes of the said tax assessment, all that is important is an address of the taxpayer. Exhibits Y-5, Y-6 and Y-1 are articles of incorporation. The mention of the actual residences of the stockholders or incorporators is not material, because all that matters with respect to the validity of the said articles of incorporation is a statement of the addresses of said incorporators or stockholders, which addresses can even be their respective offices or places of business. Exhibit SSS is an income tax return accomplished for the year 1957. Income tax returns can be filed in any place in the Philippines and the taxes paid in such place. All that is necessary as far as the Bureau of Internal Revenue is concerned is an address of the taxpayer to which the assessments made by it can be sent.

All these go to show that Cokeng did not consider the house in Quezon City as a residence. And even if the said house could be considered a residence, two facts stand out, which must be construed in favor of Cokeng, namely, (1) that his ownership of a house in Quezon City was mentioned in his amended petition for naturalization which was published in the issue of the Official Gazette of June, 1955 and three times in the Daily Record; and (2) that until now the State has not come forward with any adverse or derogatory evidence against him from persons who live adjoining or close to the said house in Quezon City.

It may be noted, in passing, that four of the above-described documents, namely, exhs. A, Y-5, Y-6 and Y-1, were executed after the filing of the amended petition for naturalization, and are therefore irrelevant and incompetent evidence.

The entire picture, as we see it, demonstrates a sincere conviction on the part of Cokeng that his house in Quezon City was not a residence of his at the time of the filing of his original petition for naturalization.

2. We cannot in words emphasize our reasoned adherence to the view that the remedy afforded the Government in a denaturalization proceeding is "a narrower one than that of direct appeal from the granting of a petition. * * * To set aside such a grant the evidence must be 'clear, unequivocal and convincing' -- it can not be done upon a bare preponderance of evidence which leaves the issue in doubt. * * * This is so because rights once conferred should not be lightly revoked. And more especially is this true when the rights are precious and when they are conferred by solemn adjudication as is the situation when citizenship is granted. * * * Were the law otherwise, valuable rights would rest upon a slender reed, and the security of the status of our naturalized citizens might depend in considerable degree upon the political temper of majority thought and the stresses of the times" (Justice Frank Murphy in *Schneiderman vs. U.S.*, 320 U.S. 125, 158-159).

In the phrase of Justice Rutledge (*Schneiderman vs. U.S.*, 320 U.S. 165-169) --

"Immediately we are concerned with only one man, William Schneiderman. Actually, though indirectly, the decision affects millions. If, seventeen years after a federal court adjudged him entitled to be a citizen, that judgment can be nullified and he can be stripped of the most precious right, by nothing more than re-examination upon the merits of the very facts the judgment established, no naturalized person's citizenship is or can be secure. If this can be done after that length of time, it can be done after thirty or fifty years. If it can be done for Schneiderman, it can be done for thousands or tens of thousands of others.

"For all that would be needed would be to produce some evidence from which any one of the federal district judges could draw a conclusion, concerning one of the ultimate facts in issue, opposite from that drawn by the judge decreeing admission. The statute does not in terms prescribe 'jurisdictional' facts. But all of the important ones are 'jurisdictional,' or have that effect, if by merely drawing a contrary conclusion from the same, at any later time a court can overturn the judgment. An applicant might be admitted today upon evidence

satisfying the court he had complied with all requirements. That judgment might be affirmed on appeal and again on certiorari here. Yet the day after, or ten years later, any district judge could overthrow it, on the same evidence, if it was conflicting or gave room for contrary inferences, or on different evidence all of which might have been presented to the first court.

"If this is the law and the right the naturalized citizen acquires, his admission creates nothing more than citizenship in attenuated, if not suspended, animation. He acquires but prima facie status, if that. Until the Government moves to cancel his certificate and he knows the outcome, he cannot know whether he is in or out. And when that is done, nothing forbids repeating the harrowing process again and again, unless the weariness of the courts should lead them to speak *res judicata*.

"It may be doubted that the framers of the Constitution intended to create two classes of citizens, one free and independent, one haltered with a lifetime string tied to the status. However that may be, and conceding that the power to revoke exists and rightly should exist to some extent, the question remains whether the power to admit can be delegated to the courts in such a way that their determination, once made, determines and concludes nothing with finality.

"If every fact in issue, going to the right to be a citizen, can be re-examined, upon the same or different proof, years or decades later; and if this can be done *de novo*, as if no judgment had been entered, whether with respect to the burden of proof required to reach a different decision or otherwise, what does the judgment determine? What does it settle with finality? If review is had and the admission is affirmed, what fact is adjudicated, if next day any or all involved can be redecided to the contrary? Can Congress, when it has empowered a court to determine and others to review and confirm, at the same time or later authorize any trial court to overturn their decrees, for causes other than such as have been held sufficient to overturn other decrees?

"I do not undertake now to decide these questions. Nor does the Court. But they have a hearing on the one which is decided. It is a judgment which is being attacked. Accordingly, it will not do to say the issue is identical with what is presented in a naturalization proceeding, is merely one of fact, upon which therefore the finding of the trial court concludes, and consequently we have no business to speak or our speaking is appellate intermeddling. That ignores the vital fact that it is a judgment, rendered in the exercise of the judicial power created by Article 3 which it is sought to overthrow, not merely a grant like a patent to land or for invention. Congress has plenary power over naturalization. That no one disputes. Nor that this power, for its application, can be delegated to the courts. But this is not to say, when Congress has so placed it, that body can decree in the same breath that the judgment rendered shall have no conclusive effect. Limits it may place, But that is another matter from making an adjudication under Article 3 merely an advisory opinion or prima facie evidence of the fact or all the facts determined. Congress has, with limited exceptions, plenary power over the jurisdiction of the federal courts. But to confer the jurisdiction and at the same time nullify entirely the effects of its exercise are not matters heretofore thought, when squarely faced, within its authority. To say therefore that the trial court's function in this case is the same as was that of the admitting court is to ignore the vast difference between overturning a judgment, with its adjudicated facts, and deciding initially upon facts which have not been adjudged."

United States vs. Anastacio, 226 F.2d 916 and Baumgartner vs. U.S., 322 U.S. 665, 670 are authority for the rule that "there must be a * * * solidity of proof which leaves no troubling doubt in deciding a question of such gravity as is implied in an attempt to reduce a person to the status of alias [or stateless person] from that of citizen." (see also 3 Am. Jur. 2d. p. 1046) Such being the case, citizenship once granted should not be taken away upon the slightest pretext of some alleged fraud or irregularity. Citizenship obtained through naturalization is not a second-class citizenship. Unlike, therefore, in naturalization proceedings where the facts and the law may be interpreted and construed strictly against the applicant, in a denaturalization case, the reverse is true. "A strict burden of proof is placed on the government. If there is any doubt on the facts, the interest of the government, and

not that of the individual, must give way. When fraud is charged, the power of denaturalization will apparently be exercised only to denaturalize the most perfidious applicants" (Torre, Aliens: Denaturalization for Fraud, 35 Calif. L.R., 449, 453). "The courts must be less concerned with what one undesirable citizen can do if he is permitted to retain his citizenship and residence in this country than with what one bad precedent-making decision can do" (U.S. v. Anastacio, supra, p. 919). "In its consequences, it [denaturalization] is more serious than a taking of one's property or the imposition of a fine or other penalty. * * * Once conferred [citizenship] should not be taken away without the clearest sort of justification and proof. * * * The facts and the law should be construed as far as is reasonably possible in favor of the citizen. Especially is this so when the attack is made long after the time when the certificate of citizenship was granted, and the citizen has meanwhile met his obligations and has committed no act of lawlessness" (Schneiderman vs. U.S., supra).

ACCORDINGLY, we vote to grant the appellee's motion for reconsideration, and to reverse the decision this Court of July 30, 1966.

Makalintal, J., concurs in this separate opinion of J. Castro.

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SEPARATE OPINION

DIZON, J.:

Before Us is a motion filed by respondent-appellee Francisco Cokeng for the reconsideration of our decision of July 30, 1966 reversing the one rendered by the Court a quo on December 11, 1961, and ordering the cancellation of the certificate of citizenship of Cokeng firstly, because of the latter's failure to state in his amended application for naturalization his residence at 28, 12th Street, Corner Broadway, Quezon City, and secondly, because of the underdeclaration of his income for several years, thereby evincing lack of that irreproachable conduct which the law requires of applicants for citizenship.

A perusal of the majority resolution penned by the Acting Chief Justice, Mr. Justice J.B.L. Reyes, concedes - albeit reluctantly - "that the second charge of under-declaration of his income has not been clearly established". With this the undersigned agrees.

It is now clear, therefore, that whether Cokeng should be denaturalized or not depends exclusively upon the first charge - his alleged failure to state in his amended application his former residence at the place mentioned heretofore. Considering the undeniable gravity of the consequences of de-naturalizing appellee - or any other naturalized Filipino citizen, for that matter - and the forceful motion for reconsideration now before Us, our duty to re-examine the case fully is inescapable.

It is not disputed that Cokeng became a naturalized Filipino citizen on December 29, 1958 and that after taking his oath of allegiance on the same date the corresponding certificate of naturalization was issued to him. All this took place after and as a result of a regular hearing held upon his amended application with due notice to the State. No question having been raised up to now regarding the publication required by law in cases of the same nature, We must assume that the hearing was held only after Cokeng's amended application was published in

accordance with law.

On March 7, 1961 - apparently upon promptings from sources outside the government with unfriendly relations with Cokeng - the then Solicitor General instituted in the Court of First Instance of Manila - the same court that granted him his Filipino citizenship - a proceeding for his denaturalization, claiming that he had obtained his certificate of naturalization fraudulently and/or illegally by making it appear in the corresponding proceedings (1) that he was a resident of Manila when in fact he resided at 28, 12th Street, Broadway, Quezon City; and that (2) he had on several occasions concealed his taxable income and thus evaded payment of taxes due from him to the government. After hearing the parties, the Court rendered its decision refusing to deprive Cokeng of his certificate of citizenship. From this the State appealed to Us. On July 30, 1966 We rendered the decision now sought to be reconsidered reversing that of the lower court and ordering the cancellation of Cokeng's certificate of citizenship upon the two grounds relied upon by the State.

After reviewing the evidence of record, We said the following, inter alia, in our decision just mentioned:

"x x x The only conclusion that can be made of these is that as of 1951, respondent-appellee had two known residences - No. 28, 12th Street, Broadway, Quezon City, and No. 428 Sto. Cristo, Manila. As it is not disputed that the only place of residence mentioned in the amended petition for naturalization which was published in the Official Gazette and of the 'Daily Record' was No. 428 Sto. Cristo, Manila, the said petition should have been denied by the lower court for non-compliance with Section 7 of Commonwealth Act 473 as amended."

We thus held that, as of 1951, Cokeng had two known residences. To the undersigned this does not now seem to be correct. As it is not the normal thing for a person to have simultaneously two different residences, whatever appears upon the face of the documents that led us to this erroneous conclusion should have been given not a literal interpretation but one that is more reasonable and more in conformity with everyday experience. Considering that Cokeng had, during all the material years, considered 428 Sto. Cristo Street, Manila, as his true residence -and this he positively alleged in his applications - it is logical and reasonable to assume that he regarded the house in Quezon City not as a second residence but only as a place where - aside from his true residence - he could also be found or contacted whenever necessary. This assumption would appear to be fully justified upon consideration of these facts: firstly, that at all the time material to this matter, Cokeng was already a married man, with a living wife and children, with a wide and extensive business of his own, and, therefore, in a position to live independently of and separately from his then ailing father who was the one living at the Quezon City house; and secondly, that Cokeng was, if I am not mistaken, one of the two living sons of his father. Therefore, while as a married man, with a wife and children, he needed and had, for obvious reasons of personal convenience - an independent residence of his own, it was not at all strange that he should frequent the Quezon City house which he himself had bought for his ailing father, to the extent that he could consider it as an address or a place where he could easily be contacted by others. His amended application, therefore, did not lie in this regard, not even by omission; it simply set forth the facts as the applicant, in all good faith, thought and knew they were. Of course, one may feel an urge to assume that he had acted in bad faith; that he knew all along that the Quezon City house was also his residence; that his purpose in giving it merely as an address or as a house owned by him was to prevent "the public and the investigating agencies of the government an opportunity to gather information and express objection relative to the petition", but it pays to remember that bad faith is never presumed nor lightly to be charged.

In the resolution of the matter before Us We must, I submit, be guided by the wise and humane considerations which animated respected members of the Supreme Court of the United States in deciding similar cases.

In the case of *Schneiderman vs. United States*, 320 U.S., 118, decided on June 21, 1943, Mr. Justice Murphy said:

"This is not a naturalization proceeding in which the Government is being asked to confer the privilege of citizenship upon an applicant. Instead the Government seeks to turn the clock back twelve years after full citizenship was conferred on petitioner by a judicial decree, and to deprive him of the priceless benefits that derive from that status. In its consequences it is more serious than a taking of one's property, or the imposition of a fine or other penalty. For it is safe to assert that nowhere in the world today is the right of citizenship of greater worth to an individual than it is in this country. It would be difficult to exaggerate its value and importance. By many it is regarded as the highest hope of civilized men. This does not mean that once granted to an alien, citizenship cannot be revoked or cancelled on legal grounds under appropriate proof. But such a right once conferred should not be taken away without the clearest sort of justification and proof. So, whatever may be the rule in a naturalization proceeding (see *United States vs. Manzi*, 276 U.S. 463, 467, 72 L ed 654-655, 48 S Ct 323), in an action instituted under Sec. 15 for the purpose of depriving one of the precious right of citizenship previously conferred, we believe the facts and the law should be construed as far as is reasonably possible in favor of the citizen. Especially is this so when the attack is made long after the time when the certificate of citizenship is granted and the citizen has meanwhile met his obligations and has committed no act of lawlessness. x x x" (at pp. 122-123).

"x x x (the) remedy afforded the Govern-ment by the denaturalization statute has been said to be a narrower one than that of the direct appeal from the granting of a petition." (at p. 125, citing *Tutun v. United States*, 270 U.S. 568; 579, 70 L ed 738, 46 S Ct 425; Cf. *United States v. Ness*, 245 U.S. 319, 325, 62 L ed 321, 324, 38 S Ct 118)

"x x x rights once conferred should not be lightly revoked x x x more especially is this true when the rights are precious and when they are conferred by a solemn adjudication, as is the situation when citizenship is granted." (at p. 125)

"x x x (the court is) dealing here with a court decree entered after an opportunity to be heard." (at p. 123)

"x x x a denaturalization proceeding, and it is a judgment, not a mere claim or a grant, which is being attacked." (at p. 135)

In his concurring opinion in the same case, Mr. Justice Douglas said:

"Citizenship can be granted only on the basis of the statutory right which Congress has created. *Tutun v. United States*, 270 U. S. 568, 70 L ed 738, 46 S Ct 425, *supra*. But where it is granted and where all the express statutory conditions precedent are satisfied we should adhere to the view that the judgment of naturalization is final and conclusive except for fraud." (at p. 165; underlining ours)

For his part, Mr. Justice Rutledge had this to say in his concurring opinion:

"x x x if, seventeen years after a federal court adjudged him entitled to be a citizen, that judgment can be nullified and he can be stripped of this most precious right, by nothing more than re-examination upon the merits of the very facts the judgment established, no naturalized person's citizen-ship is or can be secured." (at p. 166)

"If this is the law and the right the naturalized citizen acquires, his admission creates nothing more than citizenship in attenuated, if not suspended, animation. He acquires but *prima facie* status, if that. Until the government moves to cancel his certificate and he knows the outcome, he cannot know whether he is in or out. And when that is done, nothing forbids repeat-ing the harrowing process again and again, unless the weariness of the courts should lead them finally to speak *res judicata*." (at pp. 166-167; underlining ours)

"It may be doubted that the framers of the Constitution intended to create two classes of citizens, one free and independent, one haltered with a lifetime string tied to its status." (at p. 167)

Almost exactly one year later - on June 21, 1944 - in deciding the case of *Baumgartner v. United States*, 322 U.S.

665, Mr. Justice Frankfurter said:

"x x x We are fully mindful that due observation of the law governing the grant of citizenship to aliens touches the very well-being of the Nation. Nothing that we are now deciding is intended to weaken in the slightest the alertness with which admission to American citizenship should be safeguarded. But we must be equally watchful that citizenship once bestowed should not be in jeopardy nor in fear of exercising its American freedom through a too easy finding that citizenship was disloyally acquired. We have sufficiently indicated the considerations of policy, derived from the traditions of our people, that require solid proof that citizenship was falsely and fraudulently procured. These considerations must guide our judicial judgment." (at p. 676)

In his concurring opinion in the same case, Mr. Justice Murphy said:

"The decision in the *Schneiderman* case was not merely a decision of an isolated case. It was a formulation by a majority of the Court of a rule of law governing all denaturalization proceedings." (at p. 678; underlining ours)

While the undersigned does not feel too strongly inclined to invoke and follow legal precedents laid in foreign jurisdictions, he submits that in the construction of the provisions of our naturalization law, which is obviously patterned after United States statutes on the same subject, the doctrines laid down by the Supreme Court of that country must be accorded at least persuasive force.

In the light of the foregoing pronouncements, the undersigned can not bring himself to agree to deprive Cokeng of his citizenship upon what appears to be the dubious ground of his alleged failure to disclose in his application a former place of residence.

But the State claims that Cokeng's failure to list the Quezon City house either as a residence simultaneously with the Sto. Cristo, Manila home, or a former residence, had deprived the general public and the proper agencies of the government of the opportunity to gather material information regarding his qualifications and/or disqualifications.

This smacks of an attempt to rely upon a purely technical defect - if it is one at all - in the proceedings for the purpose of completely setting to naught judicial proceedings had admittedly without fraud against the State and in the course of which the latter was fully represented. It is noteworthy that neither in the State's petition to denaturalize Cokeng filed on March 2, 1961 nor at any time thereafter up to the present has the State made any claim or pretense that either before March 1961 or thereafter it had obtained positive information or tangible evidence of misconduct on the part of Cokeng, which the public or the investigating agencies of the government could have timely discovered and, therefore, the Solicitor General could have alleged as grounds of objection against Cokeng's application for citizenship, if the latter had disclosed in his application his alleged residence in Quezon City. To be remembered too is the fact that since Cokeng became a naturalized Filipino citizen (December 29, 1958), almost ten years have elapsed as of now. What the State claims, therefore, is simply this: that as Cokeng did not clearly allege that he was residing, at the time of the filing of his amended application, or that before that time he had resided in Quezon City, he must now be deprived of his citizenship notwithstanding the serious consequences, both personal and economic, that would result from such a drastic measure. This, the undersigned believes, is in accord neither with justice nor with equity. Due regard for the finality and integrity of judicial determinations; full respect and adherence to the implied commitments assumed by the State when, through its duly constituted courts, it grants citizenship to an alien who has in good faith applied for it, demand either (1) that the petition to denaturalize Cokeng be denied or (2) that before we finally set aside and declare of no value all the judicial proceedings that culminated in the grant of citizenship to him, the State should come forward with a clear statement that it has presently in its possession tangible evidence it failed to discover on time due to Cokeng's alleged failure to allege that he had also resided in Quezon City, and that such evidence is

sufficient to have induced the trial court to deny his application for citizenship. Unless the State is in a position to do so, the undersigned feels that any attempt to deprive Cokeng of his citizenship should fail.

Therefore, to the extent that the majority resolution holds that there is no clear proof of tax evasion committed by Cokeng, I concur with it. However, in so far as it denies the motion for reconsideration on the sole ground of Cokeng's alleged failure to state in his amended application that at the time of the filing thereof or before that time, he was and/or had resided in Quezon City, I dissent. In this connection, my affirmative vote on the motion for reconsideration is to set aside our original decision as well as that of the Court of First Instance, and to remand the case to the latter for further proceedings intended to give the general public and the State, once and for all, the opportunity to produce any evidence they may have showing Cokeng's lack of qualification, or his disqualification to become a Filipino citizen in accordance with our laws.

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