

MOY YA LIM YAO ALIAS EDILBERTO AGUINALDO LIM AND LAU YUEN YEUNG, PETITIONERS-APPELLANTS, VS. THE COMMISSIONER OF IMMIGRATION, RESPONDENT-APPELLEE.

G.R. No. L-21289. October 04, 1971

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the following decision of the Court of First Instance of Manila in its Civil Case No. 49705 entitled Moy Ya Lim Yao, etc. et al. vs. The Commissioner of Immigration which, brief as it is, sufficiently depicts the factual setting of and the fundamental issues involved in this case thus:

"In the instant case, petitioners seek the issuance of a writ of in-junction against the Commissioner of Immigration, 'restraining the latter and/or his authorized representative from ordering plaintiff Lau Yuen Yeung to leave the Philippines and causing her arrest and deportation and the confiscation of her bond, upon her failure to do so.'

"The prayer for preliminary in-junction embodied in the complaint, having been denied, the case was heard on the merits and the parties submitted their respective evidence.

"The facts of the case, as sub-stantially and correctly stated by the Solicitor General are these:

'On February 8, 1961, Lau Yuen Yeung applied for a pass-port visa to enter the Philip-pines as a non-immigrant. In the interrogation made in con-nection with her application for a temporary visitor's visa to enter the Philippines, she stated that she was a Chinese residing at Kowloon, Hongkong, and that she desired to take a pleasure trip to the Philip-pines to visit her great (grand) uncle Lau Ching Ping for a period of one month (Exhibits '1', '1-a ', and '2'). She was permitted to come into the Philippines on March 13, 1961 and was permitted to stay for a period of one month which would expire on April 13, 1961. On the date of her ar-rival, Asher Y. Cheng filed a bond in the amount of P1,000.00 to undertake, among others, that said Lau Yuen Yeung would actually depart from the Philippines or before the expiration of her authorized period of stay in this country or within the pe-riod as in his discretion the Commissioner of Immigration or his authorized representative might pro-perly allow. After re-peated extensions, peti-tioner Lau Yuen Yeung was allowed to stay in the Philippines up to February 13, 1962 (Exhibit '4'). On January 25, 1962, she contracted marriage with Moy Ya Lim Yao alias Edilberto Aguinaldo Lim an alleged Filipino citizen. Because of the contemplated action of respondent to confis-cate her bond and order her arrest and immediate deportation, after the ex-piration of her authorized stay, she brought this act-ion for injunction with preliminary injunction. At the hearing which took place one and a half years after her arrival, it was admitted that petitioner Lau Yuen Yeung could not write either English or Tagalog. Except for a few words, she could not speak either English or Tagalog. She could not name any Fi-lipino neighbor, with a Filipino name except one, Rosa. She did not know the names of her brothers-in-law, or sisters-in-law.

"Under the facts unfolded above, the Court is of the considered opinion, and so holds, that the instant petition

for injunction cannot be sustained for the same reasons set forth in the Order this Court, dated March 19, 1962, the pertinent portions of which read:

'First, Section 15 of the Re-vised Naturalization Law provides:

“Effect of the naturalization on wife and children. - Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines.”

The above-quoted provision is clear and its import unequivocal and hence it should be held to mean what it plainly and explicitly expresses in unmistakable terms. The clause 'who might herself be lawfully naturalized' incontestably implies that an alien woman may be deemed a citizen of the Philippines by virtue of her marriage to a Filipino citizen only if she possesses all the qualifications and none of the disqualifications specified in the law, because these are the explicit requisites provided by law for an alien to be naturalized. (Lee Suan Ay, Alberto Tan' and Lee Chiao vs. Emilio Galang, etc., G. R. No. L-11855). However, from the allegation of paragraph 3 of the complaint, to wit:

“3. That plaintiff Lau Yuen Yeung, Chinese by birth, who might herself be lawfully naturalized as a Filipino citizen (not being disqualified to become such by naturalization), is a Filipino citizen by virtue of her marriage on January 25, 1962 to plaintiff MOY YA LIM YAO alias EDILBERTO AGUINALDO LIM, under the Naturalization Laws of the Philippines.”

it can be deduced beyond debate that petitioner Lau Yuen Yeung while claiming not to be disqualified, does not and cannot allege that she possesses all the qualifications to be naturalized, naturally because, having been admitted as a temporary visitor only on March 13, 1961, it is obvious at once that she lacks, at least, the requisite length of residence in the Philippines (Revised Naturalization Law, Sec. 2, Case No. 2, Sec. 3, Case No. 3).

'Were it the intention of the law that the alien woman, to be deemed a citizen of the Philippines by virtue of marriage to a Filipino citizen, need only be not disqualified under the Naturalization Law, it would have been worded "and who herself is not disqualified to become a citizen of the Philippines.”

'Second, Lau Yuen Yeung, a temporary Chinese woman visitor, whose authorized stay in the Philippines, after repeated extensions thereof, was to expire last February 28, 1962, having married her co-plaintiff only on January 25, 1962, or just a little over one month before the expiry date of her stay, it is evident that said marriage was effected merely for convenience to defeat or avoid her then impending compulsory departure, not to say deportation. This cannot be permitted.

'Third, as the Solicitor General has well stated:

“5. That petitioner Lau Yuen Yeung, having been admitted as a temporary alien visitor on the strength of a deliberate and voluntary representation that she will enter and stay only for a period of one month and thereby secured a visa, cannot go back on her representation to stay permanently without first departing from the Philippines as she had promised.” (Chung Tiao Bing, et al. vs. Commissioner of Immigration, G. R. No. L-9966, September 29, 1956; Ong Se Lun vs. Board of Commissioners, G. R. No. L-6017, September 16, 1954; Sec. 9, last par., Phil. Immigration Law).

The aforequoted argument of the Solicitor General is well buttressed, not only by the decided cases of the Supreme Court on the point mentioned above, but also on the very provisions of Section 9, sub-paragraph (g) of the Philippine Immigration Act of 1940 which reads:

“An alien who is admitted as a non-immigrant cannot remain in the Philippines permanently. To obtain

permanent admission, a non-immigrant alien must depart voluntarily to some foreign country and procure from the appropriate Philippine Consul the proper visa and thereafter undergo examination by the Officers of the Bureau of Immigration at a Philippine port of entry for de-termination of his admis-sibility in accordance with the requirements of this Act. (This paragraph is added by Republic Act 503).'" (Sec. 9, subparagraph (g) of the Philip-pine Immigration Act of 1940).

'And fourth, respondent Com-missioner of Immigration is charged with the administration of all laws relating to immigra-tion (Sec. 3, Com. Act No. 613) and in the performance of his duties in relation to alien im-migrants, the law gives the Commissioner of Immigration a wide discretion, a quasi-judi-cial function in determining cases presented to him (Pedro Uy So vs. Commissioner of Immi-gration CA-G. R. No. 23336-R, Dec. 15, 1960), so that his de-cision thereon may not be disturbed unless he acted with abuse of discretion or in ex-cess of his jurisdiction.'

"It may also be not amiss to state that wife Lau Yuen Yeung, while she barely and insufficiently talk in broken Tagalog and English, she admitted that she cannot write either language."

The only matter of fact not clearly passed upon by His Ho-nor which could have some bearing in the resolution of this appeal is the allegation in the brief of petitioners-appellants, not denied in the government's brief, that "in the hearing, it was shown thru the testimony of the plaintiff Lau Yuen Yeung that she does not possess any of the disqualifications for naturalization." Of course, as an additional somehow relevant factual matter, it is also emphasized by said appellants that during the hearing in the lower court, held almost ten months after the alleged marriage of petitioners, "Lau Yuen Yeung was already carrying in her womb for seven months a child by her husband."

Appellants have assigned six errors allegedly commit-ted by the court a quo, thus:

I

THE LOWER COURT ERRED IN HOLDING THAT THE CLAUSE 'WHO MIGHT HERSELF BE LAWFULLY NATURALIZED' (OF SECTION 15, REVISED NATURALIZATION LAW) INCONTESTABLY IMPLIES THAT AN ALIEN WOMAN MAY BE DEEMED A CITIZEN OF THE PHILIPPINES BY VIRTUE OF HER MARRIAGE TO A FILIPINO CITIZEN, ONLY IF SHE POSSESSES ALL THE QUALIFICATIONS AND NONE OF THE DISQUALIFICATIONS SPECIFIED IN THE LAW.

II

THE LOWER COURT ERRED IN HOLDING THAT A WOMAN FOREIGNER WHO DOES NOT POSSESS ANY OF THE DISQUALIFICATIONS FOR CITIZENSHIP AND WHO MARRIED A FILIPINO CITIZEN IS STILL CONSIDERED AN ALIEN EVEN AFTER SUCH MARRIAGE AS TO FALL WITHIN THE REQUIREMENT OF SECTION 9, SUB-PARAGRAPH (9) OF THE PHILIPPINE IMMIGRATION ACT OF 1940.

III

THE COURT ERRED IN CONCLUDING THAT LAU YUEN YEUNG'S MARRIAGE TO A FILI-PINO CITIZEN WAS ONLY FOR CONVENIENCE, MERELY BECAUSE THE SAME WAS CELEBRATED JUST OVER A MONTH BEFORE THE EXPIRY DATE OF HER AUTHORIZED STAY.

IV

THE LOWER COURT ERRED IN FAILING TO FIND THAT THE COMMISSIONER OF IMMIGRATION ACTED WITH ABUSE OF DISCRETION OR IN EXCESS OF HIS JURISDICTION WHEN SAID OFFICER THREATENED TO SEND OUT OF THE COUNTRY PLAINTIFF LAU YUEN YEUNG WITH WARNING THAT HER FAILURE TO DO SO WOULD MEAN CONFISCATION OF HER BOND, ARREST AND IMMEDIATE DEPORTATION, IN SPITE OF THE FACT THAT LAU YUEN YEUNG IS NOW A FILIPINO CITIZEN.

V

THE LOWER COURT ERRED IN DISMISSING PLAINTIFFS-APPELLANTS' COMPLAINT AND IN REFUSING TO PERMANENTLY ENJOIN THE COMMISSIONER FROM ORDERING PLAINTIFF LAU YUEN YEUNG TO LEAVE THE PHILIPPINES AS A TEMPORARY VISITOR WHICH SHE IS NOT.

VI

THE LOWER COURT ERRED IN REFUSING TO GRANT PLAINTIFFS-APPELLANTS' MOTION FOR PRELIMINARY INJUNCTION EMBODIED IN THEIR COMPLAINT, IN AN ORDER DATED MARCH 19, 1962. (PAGES 36-41, RECORD ON APPEAL)

We need not discuss these assigned errors separately. In effect, the above-decision upheld the two main grounds of objection of the Solicitor General to the petition in the court below, viz:

"That petitioner Lau Yuen Yeung, having been admitted as a temporary alien visitor on the strength of a deliberate and voluntary representation that she will enter and stay only for a period of one month and thereby secured a visa, cannot go back on her representation to stay permanently without first departing from the Philippines as she had promised. (Chung Tiao Bing, et al., vs. Commissioner of Immigration, G. R. No. L-9966, September 29, 1956; Ong Se Lun vs. Board of Commissioners, G. R. No. L-6017, Sept. 16, 1954; Sec. 9, last par. Phil. Immigration Law);

"That the mere marriage of a Filipino citizen to an alien does not automatically confer on the latter Philippine citizenship. The alien wife must possess all the qualifications required by law to become a Filipino citizen by naturalization and none of the disqualifications. (Lee Suan Ay, Alberto Tan and Lee Chiao vs. Galang, etc., G. R. No. L-11855, Dec. 25, 1959)"

It is obvious from the nature of these objections that their proper resolution would necessarily cover all the points raised in appellants' assignments of error, hence, We will base our discussions, more or less, on said objections.

I.

The first objection of the Solicitor General which covers the matters dealt with in appellants' second and fourth assignments of error does not require any lengthy discussion. As a matter of fact, it seems evident that the Solicitor General's pose that an alien who has been admitted into the Philippines as a non-immigrant cannot remain here permanently unless he voluntarily leaves the country first and goes to a foreign country to secure thereat from the appropriate Philippine consul the proper visa and thereafter undergo examination by officers of the Bureau of Immigration at a Philippine port of entry for determination of his admissibility in accordance with the requirements of the Philippine Immigration Act of 1940, as amended by Republic Act 503, is premised on the assumption that petitioner Lau Yuen Yeung is not a Filipino citizen. We note the same line of reasoning in the appealed decision of the court *quo*. Accordingly, it is but safe to assume that were the Solicitor General and His Honor of the view that said petitioner had become *ipso facto* a Filipina by virtue of her marriage to her

Filipino husband, they would have held her as entitled to assume the status of a permanent resident without having to depart as required of aliens by Section 9 (g) of the law.

In any event, to set this point at rest, We hereby hold that that portion of Section 9 (g) of the Immigration Act providing:

"An alien who is admitted as a non-immigrant cannot remain in the Philippines permanently. To obtain permanent admission, a non-immigrant alien must depart voluntarily to some foreign country and procure from the appropriate Philippine consul the proper visa and thereafter undergo examination by the officers of the Bureau of Immigration at a Philippine port of entry for determination of his admissibility in accordance with the requirements of this Act."

does not apply to aliens who after coming into the Philippines as temporary visitors, legitimately become Filipino citizens or acquire Filipino citizenship. Such change of nationality naturally bestows upon them the right to stay in the Philippines permanently or not, as they may choose, and if they elect to reside here, the immigration authorities may neither deport them nor confiscate their bonds. True it is that this Court has vehemently expressed disapproval of convenient ruses employed by aliens to convert their status from temporary visitors to permanent residents in circumvention of the procedure prescribed by the legal provision already mentioned, such as in *Chiong Tiao Bing vs. Commissioner of Immigration*, 99 Phil. 1020, wherein, thru Mr. Justice J. B. L. Reyes, the Court reiterating the ruling in *Ong Se Lun vs. Board of Immigration Commissioners*, 95 Phil. 785, said:

"x x x It is clear that if an alien gains admission to the Islands on the strength of a deliberate and voluntary representation that he will enter only for a limited time, and thereby secures the benefit of a temporary visa, the law will not allow him subsequently to go back on his representation and stay permanently, without first departing from the Philippines as he had promised. No officer can relieve him of the departure requirements of section 9 of the Immigration Act, under the guise of 'change' or 'correction', for the law makes no distinctions, and no officer is above the law. Any other ruling would, as stated in our previous decision, encourage aliens to enter the Islands on false pretences; every alien so permitted to enter for a limited time, might then claim a right to permanent admission, however flimsy such claim should be, and thereby compel our government to spend time, money and effort to examining and verifying whether or not every such alien really has a right to take up permanent residence here. In the meanwhile, the alien would be able to prolong his stay and evade his return to the port whence he came, contrary to what he promised to do when he entered. The damages inherent in such ruling are self-evident."

On the other hand, however, We cannot see any reason why an alien who has been here as a temporary visitor but who has in the meanwhile become a Filipino should be required to still leave the Philippines for a foreign country, only to apply thereat for a re-entry here and undergo the process of showing that he is entitled to come back, when after all, such right has become incontestible as a necessary concomitant of his assumption of our nationality by whatever legal means this has been conferred upon him. Consider, for example, precisely the case of the minor children of an alien who is naturalized. It is indubitable that they become ipso facto citizens of the Philippines. Could it be the law that before they can be allowed permanent residence, they still have to be taken abroad so that they may be processed to determine whether or not they have a right to have permanent residence here? The difficulties and hardships which such a requirement entails and its seeming unreasonableness argue against such a rather absurd construction. Indeed, as early as 1957, in *Ly Giok Ha v. Galang*, 101 Phil. 459, Mr. Justice Concepcion, our present Chief Justice, already ruled thus:

x x x (P)etitioners allege that, upon her marriage to a Filipino, Ly Giok Ha became also a citizen of the Philippines. Indeed, if this conclusion were correct, it would follow that, in consequence of her marriage, she had been naturalized as such citizen, and, hence the decision appealed from would have to be affirmed, for section 40(c) of Commonwealth Act 613 provides that 'in the event of the naturalization as a Philippine citizen

x x x of the alien on whose behalf the bond deposit is given, the bond shall be cancelled or the sum deposited shall be re-turned to the depositor or his le-gal representative.'" (At. pp. 462--463)

In other words, the applicable statute itself more than implies that the naturalization of an alien visitor as a Philippine citizen logically produces the effect of conferring upon him ipso facto all the rights of citizenship including that of being entitled to permanently stay in the Philippines outside the orbit of authority of the Commissioner of Immigration vis-a-vis aliens, if only because by its very nature and express provisions, the Immigration Law is a law only for aliens and is inapplicable to citizens of the Philippines. In the sense thus discussed, therefore, appellants' second and fourth assignments of error are well taken.

II.

Precisely, the second objection of the Solicitor General sustained by the trial judge is that appellant Lau Yuen Yeung's marriage to appellant Moya Lim Yao alias Edilberto Aguinaldo whose Filipino citizenship is not denied did not have the effect of making her a Filipino, since it has not been shown that she "might herself be lawfully naturalized", it appearing clearly in the record that she does not possess all the qualifications required of applicants for naturalization by the Revised Naturalization Law, Commonwealth Act 473, even if she has proven that she does not suffer from any of the disqualifications thereunder. In other words, the Solicitor General implicitly concedes that had it been established in the proceedings below that appellant Lau Yuen Yeung possesses all the qualifications required by the law of applicants for naturalization, she would have been recognized by the respondent as a Filipino citizen in the instant case, without requiring her to submit to the usual proceedings for naturalization.

To be sure, this position of the Solicitor General is in accord with what used to be the view of this Court since *Lee Suan Ay, et al. v. Emilio Galang, etc., et al.*, G. R. No. L-11855 promulgated December 23, 1959, 106 Phil., 706, 713,[1] for it was only in *Zita Ngo. Burca vs. Republic*, G. R. No. L-24252 which was promulgated on January 30, 1967 (19 SCRA 186), that over the pen of Mr. Justice Conrado Sanchez, this Court held that for an alien woman who marries a Filipino to be deemed a Filipina, she has to apply for naturalization in accordance with the procedure prescribed by the Revised Naturalization Law and prove in said naturalization proceeding not only that she has all the qualifications and none of the disqualifications provided in the law but also that she has complied with all the formalities required thereby like any other applicant for naturalization,[2] albeit said decision is not yet part of our jurisprudence inasmuch as the motion for its reconsideration is still pending resolution. Appellants are in effect urging Us, however, in their first and second assignments of error, not only to reconsider *Burca* but to even reexamine *Lee Suan Ay* which, as a matter of fact, is the prevailing rule, having been reiterated in all subsequent decisions up to *So Im Ty*. [3]

Actually the first case in which Section 15 of the Naturalization Law, Commonwealth Act 473, underwent judicial construction was in the first *Ly Giok Ha* case,[4] one almost identical to the one at bar. *Ly Giok Ha*, a woman of Chinese nationality, was a temporary visitor here whose authority to stay was to expire on March 14, 1956. She filed a bond to guaranty her timely departure. On March 8, 1956, eight days before the expiration of her authority to stay, she married a Filipino by the name of Restituto Lacasta. On March 9, 1956, her husband notified the Commissioner of Immigration of said marriage and, contending that his wife had become a Filipina by reason of said marriage, demanded for the cancellation of her bond, but instead of acceding to such request, the Commissioner required her to leave, and upon her failure to do so, on March 16, 1956, the Commissioner confiscated her bond; a suit was filed for the recovery of the bond; the lower court sustained her contention that she had no obligation to leave because she had become Filipina by marriage, hence her bond should be returned. The Commissioner appealed to this Court. In the said appeal, Mr. Justice Roberto Concepcion, our present Chief Justice, spoke for the Court, thus:

"The next and most important question for determination is whether her marriage to a Filipino justified or, at least, excused the aforesaid failure of Ly Giok Ha to depart from the Philippines on or before March 14, 1956. In maintaining the affirmative view, petitioners alleged that, upon her marriage to a Filipino, Ly Giok Ha became, also, a citizen of the Philippines. Indeed, if this conclusion were correct, it would follow that, in consequence of her marriage, she had been naturalized as such citizen, and, hence, the decision appealed from would have to be affirmed, for section 40 (c) of Commonwealth Act No. 613 provides that 'in the event of the naturalization as a Philippine citizen x x x of the alien on whose behalf the bond deposit is given, the bond shall be cancelled or the sum deposited shall be returned to the depositor or his legal representative.' Thus the issue boils down to whether an alien female who marries a male citizen of the Philippines follows ipso facto his political status.

"The pertinent part of section 15 of Commonwealth Act No. 473, upon which petitioners rely, reads:

'Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen Philippines.'

"Pursuant thereto, marriage to a male Filipino does not vest Philippine citizenship to his foreign wife, unless she 'herself may be lawfully naturalized.' As correctly held in an opinion of the secretary of Justice (Op. No. 52, series of 1950)# this limitation of section 15 excludes, from the benefits of naturalization by marriage, those disqualified from being naturalized as citizens of the Philippines under section 4 of said Commonwealth Act No. 473, namely:

- '(a) Persons opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;
- '(b) Persons defending or teaching the necessity or propriety of violence, personal assault, or assassination for the success and predominance of their ideas;
- '(c) Polygamists or believers in the practice of polygamy;
- '(d) Persons convicted of crimes involving moral turpitude;
- '(e) Persons suffering from mental alienation or incurable contagious diseases;
- '(f) Persons who, during the period of their residence in the Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos;
- '(g) Citizens or subjects of nations with whom the x x x Philippines are at war, during the period of such war;
- '(h) Citizens or subjects of a foreign country other than the United States, whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof.'

"In the case at bar, there is neither proof nor allegation in the pleadings that Ly Giok Ha does not fall under any of the classes disqualified by law. Moreover, as the parties who claim that, despite her failure to depart from the Philippines within the period specified in the bond in question, there has been no breach thereof, petitioners have the burden of proving her alleged change of political status, from alien to citizen. Strictly speaking, petitioners have not made out, therefore, a case against the respondents-appellants.

"Considering, however, that neither in the administrative proceedings, nor in the lower court, had the parties seemingly felt that there was an issue on whether Ly Giok Ha may be lawfully naturalized, and this being a case of first impression in our courts, we are of the opinion that, in the interest of equity and justice, the parties here-in should be given an opportunity to introduce evidence, if they have any, on said issue." (At pp. 462-464.)

As may be seen, although not specifically in so many words, no doubt was left in the above decision as regards the following propositions:

1. That under Section 15 of Commonwealth Act 473, the Revised Naturalization Law, the marriage of an alien woman to a Filipino makes her a Filipina, if she "herself might be lawfully naturalized";
2. That this Court declared as correct the opinion of the Secretary of Justice that the limitation of Section 15 of the Naturalization Law excludes from the benefits of naturalization by marriage, only those disqualified from being naturalized under Section 4 of the law quoted in the decision;
3. That evidence to the effect that she is not disqualified may be presented in the action to recover her bond confiscated by the Commissioner of Immigration;
4. That upon proof of such fact, she may be recognized as Filipina; and
5. That in referring to the disqualifications enumerated in the law, the Court somehow left the impression that no inquiry need be made as to qualifications[5] specially considering that the decision cited and footnoted several opinions of the Secretary of Justice, the immediate superior of the Commissioner of Immigration, the most important of which are the following:

"Paragraph (a), section 13 of Act No. 2927, as amended, (now section 15, Commonwealth Act No. 473), provided that 'any woman who is now or hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines.' A similar provision in the naturalization law of the United States has been construed as not requiring the woman to have the qualifications of residence, good character, etc., as in the case of naturalization by judicial proceedings, but merely that she is of the race of persons who may be naturalized. (Kelly v. Owen [Dist. Col. 1868] 7 Wall 496, 57, 11, 12; ex parte Tryason [D. C. Wash. 1914] 215 F. 449, 27 Op. Atty. Gen. 507). (Op. No. 168 s. 1940 of Justice Sec. Jose Abad Santos.)

"In a previous opinion rendered for your Office, I stated that the clause 'who might herself be lawfully naturalized', should be construed as not requiring the woman to have the qualifications of residence, good character, etc., as in cases of naturalization by judicial proceedings, but merely that she is of the race of persons who may be naturalized. (Op. No. 79, s. 1940)

"Inasmuch as the race qualification has been removed by the Revised Naturalization Law, it results that any woman who married a citizen of the Philippines prior to or after June 17, 1939, and the marriage not having been dissolved, and on the assumption that she possesses none of the disqualifications mentioned in Section 4 of Commonwealth Act No. 473, follows the citizenship of her husband." (Op. No. 176, s. 1940 of Justice Sec. Jose Abad Santos.)

"From the foregoing narration of facts, it would seem that the only material point of inquiry is as to the citizenship of Arce Machura. If he shall be found to be a citizen of the Philippines, his wife, Mrs. Lily James Machura, shall likewise be deemed a citizen of the Philippines pursuant to the provision of Section 15, Commonwealth Act No. 473, which reads in part as follows:

'Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines.'

"The phrase 'who might herself be lawfully naturalized', as contained in the above provision, means that the woman who is married to a Filipino citizen must not belong to any of the disqualified classes enumerated in Section 4 of the Naturalization Law (Ops., Sec. of Jus., No. 28, s. 1950; No. 43 s. 1948; No. 95, s. 1941; Nos. 79 and 168, s. 1940). Under the facts stated in the within papers, Mrs. Machura does not appear to be among the disqualified classes mentioned in the law.

"It having been shown that Arce Machura or Arsenio Guevara was born as an illegitimate of a Filipino mother, he should be considered as a citizen of the Philippines in consonance with the well-settled rule that an illegitimate child follows the citizenship of his only legally recognized parent, the mother (Op., Sec. of Just., Nos. 5b, 98 & 281, s. 1948; No. 96, s. 1949). Her husband being a Filipino, Mrs. Machura must necessarily be deemed as a citizen of the Philippines by marriage (Sec. 15, Com. Act No. 473). (Op. No. 52, s. 1950 of Justice Sec. Ricardo Nepomuceno.)

The logic and authority of these opinions, compelling as they are, must have so appealed to this Court that five days later, on May 22, 1957, in *Ricardo Cua v. The Board of Commissioners*, 101 Phil. 521, Mr. Justice J. B. L. Reyes, reiterated the same ruling on the basis of the following facts:

Tjioe Wu Suan, an Indonesian, arrived in Manila on November 1, 1952, but it turned out that her passport was forged. On December 10, 1953, a warrant was issued for her arrest for purposes of deportation. Later on December 20, 1953, she married Ricardo Cua, a Filipino, and because of said marriage, the Board of Special Inquiry considered her a Filipina. Upon a review of the case, however, the Board of Immigration Commissioners insisted on continuing with the deportation proceedings and so, the husband filed prohibition and mandamus proceedings. The lower court denied the petition. Although this Court affirmed said decision, it held, on the other hand, that:

"Granting the validity of marriage, this Court has ruled in the recent case of *Ly Giok Ha v. Ga-lang*, supra, p. 459, that the bare fact of a valid marriage to a citizen does not suffice to confer his citizenship upon the wife. Section 15 of the Naturalization Law requires that the alien woman who marries a Filipino must show, in addition, that she 'might herself be lawfully naturalized' as a Filipino citizen. As construed in the decision cited, this last condition requires proof that the woman who married a Filipino is herself not disqualified under section 4 of the Naturalization Law.

"No such evidence appearing on record, the claim of assumption of Filipino citizenship by Tjioe Wu Suan, upon her marriage to petitioner, is untenable. The lower court, therefore, committed no error in refusing to interfere with the deportation proceedings, where she can anyway establish the requisites indispensable for her acquisition of Filipino citizenship, as well as the alleged validity of her Indonesian passport." (*Ricardo Cua v. The Board of Immigration Commissioners*, G. R. No. L-9997, May 1957, 101 Phil. 521, 523.) [Underscoring supplied]

For emphasis, it is reiterated that in the above two cases, this Court expressly gave the parties concerned opportunity to prove the fact that they were not suffering from any of the disqualifications of the law without the need of undergoing any judicial naturalization proceeding. It may be stated, therefore, that, according to the above decisions, the law in this country, on the matter of the effect of marriage of an alien woman to a Filipino is that she thereby becomes a Filipina, if it can be proven that at the time of such marriage, she does not possess any of the disqualifications enumerated in Section 4 of the Naturalization Law, without the need of submitting to any naturalization proceedings under said law.

It is to be admitted that both of the above decisions made no reference to qualifications, that is, as to whether or not they need also to be proved, but, in any event, it is a fact that the Secretary of Justice understood them to mean that such qualifications need not be possessed nor proven. Then Secretary of Justice Jesus Barrera, who later became a distinguished member of this Court^[6] so ruled in opinions rendered by him subsequent to *Ly Giok Ha*, the most illustrate of which held:

"At the outset it is important to note that an alien woman, married to a Filipino citizen needs only to show that she 'might herself be lawfully naturalized' in order to acquire Philippine citizenship. Compliance with other condition of the statute, such as those relating to the qualifications of an applicant for naturalization through judicial proceedings, is not necessary. (*Sec. Leonard v. Grant*, 5 Fed. 11; 27 Ops. Atty. Gen. [U.S] 507; Ops.

Sec. of Justice No. 776, s. 1940, and No. 111, s. 1953.

"This view finds support in the case of *Ly Giok Ha et al. v. Galang et al.*, G. R. No. L-10760, promulgated May 17, 1957, where the Supreme Court, construing the above-quoted section of the Naturalization Law, held that 'marriage to a male Filipino does not vest Philippine citizenship to his foreign wife, unless she 'herself may be lawfully naturalized,' and that 'this limitation of Section 15 excludes, from the benefits of naturalization by marriage, those disqualified from being naturalized as citizens of the Philippines under Section 4 of said Commonwealth Act No. 473.' In other words, disqualification for any of the causes enumerated in Section 4 of the Act is the decisive factor that defeats the right of the foreign wife of a Philippine citizen to acquire Philippine citizenship.

x x x x x

"Does petitioner, Lim King Bian, belong to any of these groups? The Commissioner of Immigration does not say so but merely predicates his negative action on the ground that a warrant of deportation for 'over-staying' is pending against the petitioner.

"We do not believe the position is well taken. Since the grounds for disqualification for naturalization are expressly enumerated in the law, a warrant of deportation not based on a finding of unfitness to become naturalized for any of those specified causes may not be invoked to negate acquisition of Philippine citizenship by a foreign wife of a Philippine citizen under Section 15 of the Naturalization Law. (*Inclusio unius est exclusio alterius.*)" (Op. No. 12, s. 1958 of Justice Undersec. Jesus G. Barrera.)

"Regarding the steps that should be taken by an alien woman married to a Filipino citizen in order to acquire Philippine citizenship, the procedure followed in the Bureau of Immigration is as follows: The alien woman must file a petition for the cancellation of her alien certificate of registration alleging, among other things, that she is married to a Filipino citizen and that she is not disqualified from acquiring her husband's citizenship pursuant to section 4 of Commonwealth Act No. 473, as amended. Upon the filing of said petition, which should be accompanied or supported by the joint affidavit of the petitioner and her Filipino husband to the effect that the petitioner does not belong to any of the groups disqualified by the cited section from becoming naturalized Filipino citizen (please see attached CEB Form 1), the Bureau of Immigration conducts an investigation and thereafter promulgates its order or decision granting or denying the petition." (Op. No. 38, s. 1958 of Justice Sec. Jesus G. Barrera.)

"This view finds support in the case of *Ly Giok Ha et al. v. Galang et al.* (G. R. No. L-10760, promulgated May 17, 1957), where the Supreme Court, construing the above-quoted section in the Revised Naturalization Law, held that 'marriage to a male Filipino does not vest Philippine citizenship to his foreign wife, unless she 'herself may be lawfully naturalized,' and that 'this limitation of Section 15 excludes, from the benefits of naturalization by marriage, those disqualified from being naturalized as citizen of the Philippines under Section 4 of said Commonwealth Act No. 473.' In other words, disqualification for any of the causes enumerated in section 4 of the Act is the decisive factor that defeats the right of an alien woman married to a Filipino citizen to acquire Philippine citizenship." (Op. 57, s. 1958 of Justice Sec. Jesus G. Barrera.)

"The contention is untenable. The doctrine enunciated in the *Ly Giok Ha* case is not a new one. In that case, the Supreme Court held that under paragraph 1 of Section 15 of Commonwealth Act No. 473, 'marriage to a male Filipino does not vest Philippine citizenship to his foreign wife unless she "herself may be lawfully naturalized"' and, quoting several earlier opinions of the Secretary of Justice, namely: No. 52, s. 1950; No. 168, s. 1940; No. 95, s. 1941; No. 63, s. 1948; No. 28, s. 1950, 'this limitation of section 15 excludes from the benefits of naturalization by marriage, those disqualified from being naturalized as citizens of the Philippines under section 4 of said Commonwealth Act No. 473.'" (Op. 134, s. 1962 of Justice Undersec. Magno S. Gatmaytan.)

It was not until more than two years later that, in one respect, the above construction of the law was importantly

modified by this Court in *Lee Suan Ay*, *supra*, in which the facts were as follows:

"Upon expiration of the appellant *Lee Suan Ay*'s authorized period of temporary stay in the Philippines (25 March 1955), on 26 March 1955 the Commissioner of Immigration asked the bondsman to present her to the Bureau of Immigration within 24 hours from receipt of notice, otherwise the bond will be confiscated (Annex 1). For failure of the bondsman to comply with the foregoing order, on 1 April 1955 the Commissioner of Immigration ordered the cash bond confiscated (Annex E). Therefore, there was an order issued by the Commissioner of Immigration confiscating or forfeiting the cash bond. Unlike in forfeiture of bail bonds in criminal proceedings, where the Court must enter an order forfeiting the bail bond and the bondsman must be given an opportunity to present his principal or give a satisfactory reason for his inability to do so, before final judgment may be entered against the bondsman, (section 15, Rule 110; *U. S. v. Bonoan*, 22 Phil. 1.) in forfeiture of bonds posted for the temporary stay of an alien in the Philippines, no court proceeding is necessary. Once a breach of the terms and conditions of the undertaking in the bond is committed, the Commissioner of Immigration may, under the terms and conditions thereof, declare it forfeited in favor of the Government." (In the meanwhile, on April 1, 1955, *Lee Suan Ay* and *Alberto Tan*, a Filipino, were joined in marriage by the Justice of the Peace of Las Piñas, Rizal.)

Mr. Justice Sabino Padilla speaking for a unanimous court which included Justices Concepcion and Reyes who had penned *Ly Giok Ha* and *Ricardo Cua*, ruled thus:

"The fact that *Lee Suan Ay* (a Chinese) was married to a Filipino citizen does not relieve the bondsman from his liability on the bond. The marriage took place on 1 April 1955, and the violation of the terms and conditions of the undertaking in the bond - failure to depart from the Philippines upon expiration of her authorized period of temporary stay in the Philippines (25 March 1955) and failure to report to the Commissioner of Immigration within 24 hours from receipt of notice - were committed before the marriage. Moreover, the marriage of a Filipino citizen to an alien does not automatically confer Philippine citizenship upon the latter. She must possess the qualifications required by law to become a Filipino citizen by naturalization.[#] There is no showing that the appellant *Lee Suan Ay* possesses all the qualifications and none of the disqualifications provided for by law to become a Filipino citizen by naturalization."

Pertinently to be noted at once in this ruling, which, to be sure, is the one relied upon in the appealed decision now before Us, is the fact that the footnote of the statement therein that the alien wife "must possess the qualifications required by law to become a Filipino citizen by naturalization" makes reference to Section 15, Commonwealth Act 473 and precisely, also to *Ly Giok Ha v. Galang*, *supra*. As will be recalled, on the other hand, in the opinions of the Secretary of Justice explicitly adopted by the Court in *Ly Giok Ha*, among them, Opinion No. 176, Series of 1940, above-quoted, it was clearly held that "(I)n a previous opinion rendered for your Office, I stated that the clause 'who might herself be lawfully naturalized', should be construed as not requiring the woman to have the qualifications of residence, good character, etc., as in cases of naturalization by judicial proceedings, but merely that she is of the race of persons who may be naturalized." (Op. No. 79, s. 1940)

Since Justice Padilla gave no reason at all for the obviously significant modification of the construction of the law, it could be said that there was need for clarification of the seemingly new posture of the Court. The occasion for such clarification should have been in *Kua Suy etc., et al. vs. The Commissioner of Immigration*, G. R. No. L-13790, October 31, 1963, penned by Mr. Justice J. B. L. Reyes, who had rendered the opinion in *Ricardo Cua*, *supra*, which followed that in *Ly Giok Ha*, *supra*, but apparently seeing no immediate relevancy in the case on hand then of the particular point in issue now, since it was not squarely raised therein similarly as in *Lee Suan Ay*, hence, anything said on the said matter would at best be no more than obiter dictum, Justice Reyes limited himself to holding that "Under Section 15 of the Naturalization Act, the wife is deemed a citizen of the Philippines only if she 'might herself be lawfully naturalized', so that the fact of marriage to a citizen, by itself alone, does not suffice to confer citizenship, as this Court has previously ruled in *Ly Giok Ha v. Galang*, 54 O. G. 356, and in *Cua v.*

Board of Immigration Commissioners, 53 O. G. 8567; and there is here no evidence of record as to the qualifications or absence of disqualifications of appellee Kua Suy", with-out explaining the apparent departure already pointed out from Ly Giok Ha and Ricardo Cua. Even Justice Makalintal who wrote a separate concurring and dissenting opinion merely lumped together Ly Giok Ha, Ricardo Cua and Lee Suan Ay and opined that both qualifications and non-dis-qualifications have to be shown without elucidating on what seemed to be departure from the said first two deci-sions.

It was only on November 30, 1963 that to Mr. Just-ice Roberto Regala fell the task of rationalizing the Court's position. In *Lo San Tuang v. Galang*, G. R. No. L-18775, November 30, 1963, 9 SCRA 638, the facts were simply these: Lo San Tuang, a Chinese woman, arrived in the Philippines on July 1, 1960 as a temporary visitor with authority to stay up to June 30, 1961. She married a Filipino on January 7, 1961, almost six months before the expiry date of her permit, and when she was request-ed to leave after her authority to stay had expired, she refused to do so, claiming she had become a Filipina by marriage, and to bolster her position, she submitted an affidavit stating explicitly that she does not possess any of the disqualifications enumerated in the Naturali-zation Law, Commonwealth Act 473. When the case reached the court, the trial judge held for the government that in addition to not having any of the disqualifications referred to, there was need that Lo San Tuang should have also possessed all the qualifications of residence, moral character, knowledge of a native principal dialect, etc., provided by the law. Recognizing that the issue squarely to be passed upon was whether or not the posses-sion of all the qualifications were indeed needed to be shown apart from non-disqualification, Justice Regala held affirmatively for the Court, reasoning out thus:

"It is to be noted that the peti-tioner has anchored her claim for citizenship on the basis of the de-cision laid down in the case of *Leo-nard v. Grant*, 5 Swy. 603, 5 F 11, where the Circuit Court of Oregon, held that it was only necessary that the woman 'should be a person of the class or, race permitted to be naturalized by existing laws, and that in respect of the qualifications arising out of her conduct or opinions, being the wife of a citizen, she is to be regarded as qualified for citizenship, and therefore considered a citizen.' (In explanation of its conclusion, the Court said: 'If, whenever dur-ing the life of the woman or after-wards, the question of her citizen-ship arises in a legal proceeding, the party asserting her citizenship by reason of her marriage with a citizen must not only prove such marriage, but also that the woman then possessed all the further qua-lifications necessary to her becom-ing naturalized under existing laws, the statute will be practically nugatory, if not a delusion and a snare. The proof of the facts may have existed at the time of the marriage, but years after, when a controversy arises upon the sub-ject, it may be lost or difficult to find.')

"In other words, all that she was required to prove was that she was a free white woman or a woman of African descent or nativity, in order to be deemed an American ci-tizen, because, with respect to the rest of the qualifications on resi-dence, moral character, etc., she was presumed to be qualified.

"Like the law in the United States, our former Naturalization Law (Act No. 2927, as amended by Act No. 3448) specified the classes of persons who alone might become citizens of the Philippines, even as it provided who were disqualified. Thus, the pertinent provisions of that law provided:

'Section 1. Who may become Philippine citizens. - Philippine citizenship may be acquired by (a) natives of the Philippines who are not citizens thereof un-der the Jones Law; (b) na-tives of the Insular posses-sions of the United States; (c) citizens of the United States, or foreigners who under the laws of the United States may become citizens of said country if residing therein.

'Section 2. Who are dis-qualified. - The following cannot be naturalized as Philippine citizens: (a) Persons opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized government; (b) persons defending or teaching the necessity or propriety of violence, personal assault or assassina-tion for the success and predominance of their ideas; (c) polygamists or

believers in the practice of polygamy; (d) persons convicted of crimes involving moral turpitude; (e) persons suffering from mental alienation or incurable contagious diseases; (f) citizens or subjects of nations with whom the United States and the Philippines are at war, during the period of such war.

'Section 3. Qualifications. - The persons comprised in sub-section (a) of section one of this Act, in order to be able to acquire Philippine citizenship, must be not less than twenty-one years of age on the day of the hearing of their petition.

'The persons comprised in sub-sections (b) and (c) of said section one shall, in addition to being not less than twenty-one years of age on the day of the hearing of the petition, have all and each of the following qualifications:

'First. Residence in the Philippine Islands for a continuous period of not less than five years, except as provided in the next following section;

'Second. To have conducted themselves in a proper and irreproachable manner during the entire period of their residence in the Philippine Islands, in their relation with the constituted government as well as with the community in which they are living;

'Third. To hold in the Philippine Islands real estate worth not less than one thousand pesos, Philippine currency, or have some known trade or profession; and

'Fourth. To speak and write English, Spanish, or some native tongue.

'In case the petitioner is a foreign subject, he shall, besides, declare in writing and under oath his intention of renouncing absolutely and perpetually all faith and allegiance to the foreign authority, state or sovereignty of which he was a native, citizen or subject.'

"Applying the interpretation given by *Leonard v. Grant*, supra, to our law as it then stood, alien women married to citizens of the Philippines must, in order to be deemed citizens of the Philippines, be either (1) natives of the Philippines who were not citizens thereof under the Jones Law, or (2) natives of other Insular possessions of the United States, or (3) citizens of the United States or foreigners who under the laws of the United States might become citizens of that country if residing therein. With respect to the qualifications set forth in Section 3 of the former law, they were deemed to have the same for all intents and purposes.

"But, with the approval of the Revised Naturalization Law (Commonwealth Act No. 473) on June 17, 1939, Congress has since discarded class or racial consideration from the qualifications of applicants for naturalization (according to its proponent, the purpose in eliminating this consideration was, first, to remove the features of the existing naturalization act which discriminated in favor of the Caucasians and against Asiatics who are our neighbors, and are related to us by racial affinity and, second, to foster amity with all nations [*Sinco, Phil. Political Law* 502 - 11 ed.]), even as it retained in Section 15 the phrase in question. The result is that the phrase 'who might herself be lawfully naturalized' must be understood in the context in which it is now found, in a setting so different from that in which it was found by the Court in *Leonard v. Grant*.

"The only logical deduction from the elimination of class or racial consideration is that, as the Solicitor General points out, the phrase 'who might herself be lawfully naturalized' must now be understood as referring to those who under Section 2 of the law are qualified to become citizens of the Philippines.

"There is simply no support for the view that the phrase 'who might herself be lawfully naturalized' must now be understood as requiring merely that the alien woman must not belong to the class of disqualified persons under Section 4 of the Revised Naturalization Law. Such a proposition misreads the ruling laid down in *Leonard v. Grant*. A person who is not disqualified is not necessarily qualified to become a citizen of the Philippines, because the law treats qualifications and disqualification in separate sections. And then it must not be lost sight of that even under the interpretation given to the former law, it was to be understood that the

alien woman was not disqualified under Section 2 of that law. *Leonard v. Grant* did not rule that it was enough if the alien woman does not belong to the class of disqualified persons in order that she may be deemed to follow the citizenship of her husband: What that case held was that the phrase 'who might herself be lawfully naturalized' merely means that she belongs to the class or race of persons qualified to become citizens by naturalization - the assumption being always that she is not otherwise disqualified.

"We therefore hold that under the first paragraph of Section 15 of the Naturalization Law, an alien woman, who is married to a citizen of the Philippines, acquires the citizenship of her husband only if she has all the qualifications and none of the disqualifications provided by law. Since there is no proof in this case that petitioner has all the qualifications and is not in any way disqualified, her marriage to a Filipino citizen does not automatically make her a Filipino citizen. Her affidavit to the effect that she is not in any way disqualified to become a citizen of this country was correctly disregarded by the trial court, the same being self-serving."

Naturally, almost a month later in *Sun Peck Yong v. Commissioner of Immigration*, G. R. No. L-20784, December 27, 1963, 9 SCRA 875, wherein the Secretary of Foreign Affairs reversed a previous resolution of the preceding administration to allow Sun Peck Yong and her minor son to await the taking of the oath of Filipino citizenship of her husband two years after the decision granting him nationalization and required her to leave and this order was contested in court, Justice Barrera held:

"In the case of *Lo San Tuang v. Commissioner of Immigration* (G. R. No. L-18775, promulgated November 30, 1963; *Kua Suy v. Commissioner of Immigration*, G.R. No. L-13790, promulgated October 31, 1963), we held that the fact that the husband became a naturalized citizen does not automatically make the wife a citizen of the Philippines. It must also be shown that she herself possesses all the qualifications, and none of the disqualifications, to become a citizen. In this case, there is no allegation, much less showing, that petitioner-wife is qualified to become a Filipino citizen herself. Furthermore, the fact that a decision was favorably made on the naturalization petition of her husband is no assurance that he (the husband) would become a citizen, as to make a basis for the extension of her temporary stay."

On the same day, in *Tong Siok Sy v. Vivo*, G. R. No. L-21136, December 27, 1963, 9 SCRA 876, Justice Barrera re-iterated the same ruling and citing particularly *Lo San Tuang* and *Kua Suy*, held that the marriage of Tong Siok Sy to a Filipino on November 12, 1960 at Taichung, Taiwan and her taking her oath of Filipino citizenship before the Philippine Vice-Consul at Taipei, Taiwan on January 6, 1961 did not make her a Filipino citizen, since she came here only in 1961 and obviously, she had not had the necessary ten-year residence in the Philippines required by the law.

Such then was the status of the jurisprudential law on the matter under discussion when Justice Makalintal sought a reexamination thereof in *Choy King Tee v. Galang*, G. R. No. L-18351, March 26, 1965, 13 SCRA 402. Choy King Tee's husband was granted Philippine citizenship on January 13, 1959 and took the oath on January 31 of the same year. Choy King Tee first came to the Philippines in 1955 and kept commuting between Manila and Hongkong since then, her last visa before the case being due to expire on February 14, 1961. On January 27, 1961, her husband asked the Commissioner of Immigration to cancel her alien certificate of registration, as well as their child's, for the reason that they were Filipinos, and when the request was denied as to the wife, a mandamus was sought, which the trial court granted. Discussing anew the issue of the need for qualifications, Justice Makalintal not only reiterated the arguments of Justice Regala in *Lo San Tuang* but added further that the ruling is believed to be in line with the national policy of selective admission to Philippine citizenship.[7]

No wonder, upon this authority, in *Austria v. Con-chu*, G. R. No. L-20716, June 22, 1965, 14 SCRA 336, Justice J. P. Bengzon readily reversed the decision of the lower court granting the writs of mandamus and prohibition against the Commissioner of Immigration, considering that Austria's wife, while admitting she did not possess all

the qualifications for naturalization, had submitted only an affidavit that she had none of the disqualifications therefor. So also did Justice Dizon similarly hold eight days later in *Brito v. Commissioner*, G. R. No. L-16829, June 30, 1965, 14 SCRA 539.

Then came the second *Ly Giok Ha* case^[8] wherein Justice J. B. L. Reyes took occasion to expand on the reasoning of *Choy King Tee* by illustrating with examples "the danger of relying exclusively on the absence of disqualifications, without taking into account the other affirmative requirements of the law."^[9]

Lastly, in *Go Im Ty v. Republic*, G. R. No. L-17919, decided on July 30, 1966,^[10] Justice Zaldivar held for the Court that an alien woman who is widowed during the pendency of the naturalization proceedings of her husband, in order that she may be allowed to take the oath as Filipino, must, aside from proving compliance with the requirements of Republic Act 530, show that she possesses all the qualifications and does not suffer from any of the disqualifications under the Naturalization Law, citing in the process the decisions to such effect discussed above,^[11] even as he impliedly reversed pro tanto the ruling in *tan Lin v. Republic*, G. R. No. L-13786, May 31, 1961, 2 SCRA 383.

Accordingly, in *Burca*, Justice Sanchez premised his opinion on the assumption that the point now under discussion is settled law.

In the case now at bar, the Court is again called upon to rule on the same issue. Under Section 15 of the Naturalization Law, Commonwealth Act 473, providing that:

"SEC. 15. Effect of the naturalization on wife and children. - Any woman, who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines.

"Minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof.

"A foreign-born minor child, if dwelling in the Philippines at the time of the naturalization of the parent, shall automatically become a Philippine citizen, and a foreign-born minor child, who is not in the Philippines at the time the parent is naturalized, shall be deemed a Philippine citizen only during his minority, unless he begins to re-side permanently in the Philippines when still a minor, in which case, he will continue to be a Philippine citizen even after becoming of age.

"A child born outside of the Philippines after the naturalization of his parent, shall be considered a Philippine citizen, unless within one year after reaching the age of majority he fails to register himself as a Philippine citizen at the American Consulate of the country where it he resides, and to take the necessary oath of allegiance.

Is it necessary, in order that an alien woman who marries a Filipino or who is married to a man who subsequently becomes a Filipino, may become a Filipino citizen herself, that, aside from not suffering from any of the disqualifications enumerated in the law, she must also possess all the qualifications required by said law? If nothing but the unbroken line from *Lee Suan Ay* to *Go Im Ty*, as recounted above, were to be considered, it is obvious that an affirmative answer to the question would be inevitable, specially, if it is noted that the present case was actually submitted for decision on January 21, 1964 yet, shortly after *Lo San Tuang*, *Tong Siok Sy* and *Sun Peck Yong*, all *supra*, and even before *Choy King Tee*, *supra*, were decided. There are other circumstances, however, which make it desirable, if not necessary, that the Court take up the matter anew. There has been a substantial change in the membership of the Court since *Go Im Ty*, and of those who were in the Court already when *Burca* was decided, two members, Justices Makalintal and Castro concurred only in the result, precisely, according to them, because they wanted to leave the point now under discussion open in so far as they are

concerned.¹² Truth to tell, the views and arguments discussed at length with copious relevant authorities, in the motion for reconsideration as well as in the memorandum of the amici curae¹³ in the *Burca* case cannot just be taken lightly and summarily ignored, since they project in the most forceful manner, not only the legal and logical angles of the issue, but also the imperative practical aspects thereof in the light of the actual situation of the thousands of alien wives of Filipinos who stay so long, even decades, considered themselves as Filipinas and have always lived and acted as such, officially or otherwise, relying on the long standing continuous recognition of their status as such by the administrative authorities in charge of the matter; as well as by the courts. Under these circum-stances, and if only to afford the Court an opportunity to consider the views of the five justices who took no part in *Go Im Ty* (including the writer of this opinion), the Court decided to further reexamine the matter. After all, the ruling first laid in *Lee Sean Ay*, and later in *Lo San Tuang*, *Choy King Tee* and the second (1966) *Ly Giok Ha*, did not categorically repudiate the opinions of the Secretary of Justice relied upon by the first (1959) *a Giok Ha*. Besides, some points brought to light during the deliberations in this case would seem to indicate that the premises of the later cases can still bear further consideration.

Whether We like it or not, it is undeniably factual that the legal provision We are construing, Section 15, aforequoted, of the Naturalization Law has been taken directly, copied and adopted from its American counter-part. To be more accurate, said provision is nothing less than a reenactment of the American provision. A brief re-view of its history proves this beyond per adventure of doubt.

The first Naturalization Law of the Philippines approved by the Philippine Legislature under American so-vereignty was that of March 26, 1920, Act No. 2927. Before then, as a consequence of the Treaty of Paris, our citizenship laws were found only in the Organic Laws, the Philippine Bill of 1902, the Act of the United States Congress of March 23, 1912 and later the Jones Law of 1916. In fact, Act No. 2927 was enacted pursuant to express authority granted by the Jones Law. For obvious reasons, the Philippines gained autonomy on the subjects of citizenship and immigration only after the effectivity of the Philippine Independence Act. This made it practically impossible for our laws on said subject to have any perspective or orientation of our own; everything was American.

The Philippine Bill of 1902 provided pertinently:

"SECTION 4. 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, 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 provisions of the treaty of peace between the United States and Spain signed at Paris December tenth, eighteen hundred and ninety-eight."

This Section 4 of the Philippine Bill of 1902 was amended by Act of Congress of March 23, 1912, by adding a provision as follows:

"Provided, That the Philippine Legislature 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 other insular possessions of the United States, and such other persons residing in the Philippine Islands who would become citizens of the United States, under the laws of the United States, if residing therein."

The Jones Law reenacted these provisions substantially:

"SECTION 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: Pro-vided, 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 under the laws of the United States if residing therein."

For aught that appears, there was nothing in any of the said organic laws regarding the effect of marriage to a Filipino upon the nationality of an alien woman, albeit under the Spanish Civil Code provisions on citizenship, Articles 17 to 27, which were, however, abrogated upon the change of sovereignty, it was unquestionable that the citizenship of the wife always followed that of the husband. Not even Act 2927 contained any provision regarding the effect of naturalization of an alien upon the citizenship of his alien wife, nor of the marriage of such alien woman with a native born Filipino or one who had become a Filipino before the marriage, although Section 13 thereof provided thus:

"SEC. 13. Right of widow and children of petitioners who have died. - In case a petitioner should die before the final decision has been rendered, his widow and minor children may continue the proceedings. The decision rendered in the case shall, so far as the widow and minor children are concerned, produce the same legal effect as if it had been rendered during the life of the petitioner."

It was not until November 30, 1928, upon the approval of Act 3448, amending Act 2927, that the following provisions were added to the above Section 13:

"SECTION 1. The following new sections are hereby inserted between sections thirteen and fourteen of Act Numbered Twenty-nine hundred and Twenty-seven:

'SEC. 13(a). Any woman who is now or may hereafter be married to a citizen of the Philippine Islands and who might herself be lawfully naturalized, shall be deemed a citizen of the Philippine Islands.

'SEC. 13(b). Children of persons who have been duly naturalized under this law, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the Philippine Islands, be considered citizens thereof.

'SEC. 13(c). Children of persons naturalized under this law who have been born in the Philippine Islands after the naturalization of their parents shall be considered citizens thereof.'"

When Commonwealth Act 473, the current naturalization law, was enacted on June 17, 1939, the above Section 13 became its Section 15 which has already been quoted earlier in this decision. As can be seen, Section 13(a) above-quoted was re-enacted practically word for word in the first paragraph of this Section 15 except for the change of Philippine Islands to Philippines. And it could not have been on any other basis than this legislative history of our naturalization law that each and everyone of the decisions of this Court from the first *Ly Giok Ha* to *Go Im Ty*, discussed above, were rendered.

As stated earlier, in the opinion of Chief Concepcion in the first *Ly Giok Ha*, it was quite clear that for an alien woman who marries a Filipino to become herself a Filipino citizen, there is no need for any naturalization proceeding because she becomes a Filipina ipso facto from the time of such marriage, provided she does not suffer any of the disqualifications enumerated in Section 4 of Commonwealth Act 473, with no mention being made of whether or not the qualifications enumerated in Section 2 thereof need be shown. It was only in *Lee Suan Ay* in 1959 that the possession of qualifications were specifically required, but it was not until 1963, in *Lo San Tuang*, that Justice Regala reasoned out why the possession of the qualifications provided by the law should also

be shown to be possessed by the alien wife of a Filipino, for her to become a Filipina by marriage.

As may be recalled, the basic argument advanced by Justice Regala was briefly as follows: That "like the law in the United States, our Naturalization Law specified the classes of persons who alone might become citizens, even as it provided who were disqualified", and inasmuch as Commonwealth Act 473, our Naturalization Law since 1939 did not reenact the section providing who might become citizens, allegedly in order to remove racial discrimination in favor of Caucasians and against Asiatics, "the only logical deduction . . . is that the phrase 'who might herself be lawfully naturalized' must now be understood as referring to those who under Section 2 of the law are qualified to become citizens of the Philippines" and "there is simply no support for the view that the phrase 'who might herself be lawfully naturalized' must now be understood as requiring merely that the alien woman must not belong to the class of disqualified persons under Section 4 of the Revised Naturalization Law".¹⁴

A similar line of reasoning was followed in *Choy King Tee*, which for ready reference may be quoted:

"The question has been settled by the uniform ruling of this Court in a number of cases. The alien wife of a Filipino citizen must first prove that she has all the qualifications required by Section 2 and none of the disqualifications enumerated in Section 4 of the Naturalization Law before she may be deemed a Philippine citizen (*Lao Chay v. Galang*, G.R. No. L-19977, Oct. 30, 1964, citing *Lo San Tuang v. Galang*, G.R. No. L-18775, Nov. 30, 1963; *Sun Peck Yong v. Commissioner of Immigration*, G.R. No. L-20784, December 27, 1963; *Tong Siok Sy v. Vivo*, G.R. No. L-21136, December 27, 1963). The writer of this opinion has submitted the question anew to the court for a possible re-examination of the said ruling in the light of the interpretation of a similar law in the United States after which Section 15 of our Naturalization Law was patterned. That law was section 2 of the Act of February 10, 1855 (Section 1994 of the Revised Statutes of the U.S.). The local law, Act No. 3448, was passed on November 30, 1928 as an amendment to the former Philippine Naturalization Law, Act No. 2927, which was approved on March 26, 1920. Under this Naturalization Law, acquisition of Philippine citizenship was limited to three classes of persons, (a) Natives of the Philippines who were not citizens thereof (b) natives of the other insular possessions of the United States; and (c) citizens of the United States, or foreigners who, under the laws of the United States, may become citizens of the latter country if residing three years. The reference in, subdivision (c) to foreigners who may become American Citizens is restrictive in character, for only persons of certain specified races were qualified thereunder. In other words, in so far as racial restrictions were concerned there was at the time a similarity between the naturalization laws of the two countries, and hence there was reason to accord here persuasive force to the interpretation given in the United States to the statutory provision concerning the citizenship of alien women marrying American citizens.

"This Court, however, believes that such reason has ceased to exist since the enactment of the Revised Naturalization Law (Commonwealth Act No. 473) on June 17, 1939. The racial restrictions have been eliminated in this Act, but the provision found in Act No. 3448 has been maintained. It is logical to presume that when Congress chose to retain the said provision - that to be deemed a Philippine citizen upon marriage the alien wife must be one 'who might herself be lawfully naturalized,' the reference is no longer to the class or race to which the woman belongs, for class or race has become immaterial, but to the qualifications and disqualifications for naturalization as enumerated in Sections 2 and 4 of the statute. Otherwise the requirement that the woman 'might herself be lawfully naturalized' would be meaningless surplusage, contrary to settled norms of statutory construction.

"The rule laid down by this Court in this and in other cases heretofore decided is believed to be in line with the national policy of selective admission to Philippine citizenship, which after all is a privilege granted only to those who are found worthy thereof, and not indiscriminately to anybody at all on the basis alone of marriage to a man who is a citizen of the Philippines, irrespective of moral character, ideological beliefs, and identification with Filipino ideals, customs and traditions.

"Appellee here having failed to prove that she has all the qualifications for naturalization, even, in-deed, that she has none of the disqualifications, she is not entitled to recognition as a Philippine citizen."

In the second *Ly Giok Ha*, the Court further fortified the arguments in favor of the same conclusion thus:

"On cross-examination, she (*Ly Giok Ha*) failed to establish that: (1) she has been residing in the Philippines for a continuous period of at least ten (10) years (p. 27, t.s.n., id.); (2) she has a lucrative trade, profession, or lawful occupation (p. 13, t.s.n., id.); and (3) she can speak and write English, or any of the principal Philippine languages (pp. 12, 13, t.s.n., id.).

"While the appellant Immigration Commissioner contends that the words emphasized indicate that the present Naturalization Law requires that an alien woman who marries a Filipino husband must possess the qualifications prescribed by section 2 in addition to not being disqualified under any of the eight ('a' to 'h') subheadings of section 4 of Commonwealth Act No. 473, in order to claim our citizenship by marriage, both the appellee and the court below (in its second decision) sustain the view that all that the law demands is that the woman be not disqualified under section 4.

"At the time the present case was remanded to the court of origin (1960) the question at issue could be regarded as not conclusively settled, there being only the concise pronouncement in *Lee Suan Ay, et al. v. Galang*, G. R. No. L-11855, Dec. 23, 1959, to the effect that:

'The marriage of a Filipino citizen to an alien does not automatically confer Philippine citizenship upon the latter. She must possess the qualifications required by law to become a Filipino citizen by naturalization.'

"Since that time, however, a long line of decisions of this Court has firmly established the rule that the requirement of section 15 of Commonwealth Act 473 (the Naturalization Act), that an alien woman married to a citizen should be one who 'might herself be lawfully naturalized', means not only woman free from the disqualifications enumerated in section 4 of the Act but also one who possesses the qualifications prescribed by section 2 of Commonwealth Act 473 (*San Tuan v. Galang*, G.R. No. L-18775, Nov. 30, 1963; *Sun Peck Yong v. Com. of Immigration*, G.R. No. L-20784, Dec. 27, 1963; *Tong Siok Sy v. Vivo*, G.R. No. L-21136, Dec. 27, 1963; *Austria v. Conchu*, G.R. No. L-20716, June 22, 1965; *Choy King Tee v. Galang*, G.R. No. L-18351, March 26, 1965; *Brito v. Com. of Immigration*, G.R. No. L-16829, June 30, 1965).

"Reflection will reveal why this must be so. The qualifications prescribed under section 2 of the Naturalization Act, and the disqualifications enumerated in its section 4 are not mutually exclusive; and if all that were to be required is that the wife of a Filipino be not disqualified under section 4, the result might well be that citizenship would be conferred upon persons in violation of the policy of the statute. For example, section 4 disqualifies only -

'(c) Polygamists or believers in the practice of polygamy; and

'(d) Persons convicted of crimes involving moral turpitude,'

so that a blackmailer, or a maintainer of gambling or bawdy houses, not previously convicted by a competent court would not be thereby disqualified; still, it is certain that the law did not intend such person to be admitted as a citizen in view of the requirement of section 2 that an applicant for citizenship 'must be of good moral character.'

"Similarly, the citizen's wife might be a convinced believer in racial supremacy, in government by certain selected classes, in the right to vote exclusively by certain 'herrenvolk', and thus disbelieve in the principles underlying the Philippine Constitution; yet she would not be disqualified under section 4, as long as she is not 'opposed to organized government', nor affiliated to groups 'upholding or teaching doctrines opposing all organized governments', nor 'defending or teaching the necessity or propriety of violence, personal assault or assassination for the success or predominance of their ideas.' Et sic de caeteris.

"The foregoing instances should suffice to illustrate the danger of relying exclusively on the absence of disqualifications, without taking in-to account the other affirmative requirements of the law, which, in the case at bar, the appellee Ly Giok Ha admittedly does not possess.

"As to the argument that the phrase 'might herself be lawfully naturalized' was derived from the U. S. Revised Statutes (section 1994) and should be given the same territorial and racial significance given to it by American courts, this Court has rejected the same in *Lo San Tuang v. Galang*, G.R. No. L-18775, November 30, 1963; and in *Choy King Tee v. Galang*, G.R. No. L-18351, March 26, 1965."

It is difficult to minimize the persuasive force of the foregoing rationalizations, but a closer study thereof cannot but reveal certain relevant considerations which adversely affect the premises on which they are predicated, thus rendering the conclusions arrived thereby not entirely unassailable.

1. The main proposition, for instance, that in eliminating Section 1 of Act 2927 providing who are eligible for Philippine citizenship, the purpose of Commonwealth Act 473, the Revised Naturalization Law, was to remove the racial requirements for naturalization, thereby opening the door of Filipino nationality to Asiatics instead of allowing the admission thereto of Caucasians only, suffers from lack of exact accuracy. It is important to note, to start with, that Commonwealth Act 473 did away with the whole Section 1 of Act 2927 which reads thus:

"SECTION 1. Who may become Philippine citizens. - Philippine citizenship may be acquired by: (a) natives of the Philippines who are not citizens thereof under the Jones Law; (b) natives of the other Insular possessions of the United States; (c) citizens of the United States, or foreigners who under the laws of the United States may become citizens of said country if residing therein."

and not only subdivision (c) thereof. Nowhere in this whole provision was there any mention of race or color of the persons who were then eligible for Philippine citizenship. What is more evident from said provision is that it reflected the inevitable subordination of our legislation during the pre-Commonwealth American regime to the understandable limitations flowing from our status as a territory of the United States by virtue of the Treaty of Paris. In fact, Section 1 of Act 2927 was precisely approved pursuant to express authority, without which it could not have been done, granted by an amendment to Section 4 of the Philippine Bill of 1902 introduced by the Act of the United States Congress of March 23, 1912 and which was reenacted as part of the Jones Law of 1916, the pertinent provisions of which have already been quoted earlier. In truth, therefore, it was because of the establishment of the Philippine Commonwealth and in the exercise of our legislative autonomy on citizenship matters under the Philippine Independence Act that Section 1 of Act 2927 was eliminated,¹⁵ and not purposely to eliminate any racial discrimination contained in our Naturalization Law. The Philippine Legislature naturally wished to free our Naturalization Law from the impositions of American legislation. In other words, the fact that such discrimination was removed was one of the effects rather than the intended purpose of the amendment.

2. Again, the statement in *Choy King Tee* to the effect that "the reference subdivision (c) (of Section 1 of Act 2927) foreigners who may become American citizen is restrictive character, for only persons of certain specified races were qualified thereunder" fails to consider the exact import of the said subdivision. Explicitly, the thrust of the said subdivision was to confine the grant under it of Philippine citizenship only to the three classes of persons therein mentioned, the third of which were citizens of the United States and, corollarily, persons who could be American citizens under her laws. The words used in the provision do not convey any idea of favoring aliens of any particular race or color and of excluding others, but more accurately, they refer to all the disqualifications of foreigners for American citizenship under the laws of the United States. The fact is that even as of 1906, or long before 1920, when our Act 2927 became a law, the naturalization laws of the United States already provided for the following disqualifications in the Act of the Congress of June 29, 1906:

"SEC. 7. That no person who disbelieves in or who is opposed to organized government, or who is a

member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States."

and all these disqualified persons were, therefore, ineligible for Philippine citizenship under Section 1 of Act 2927 even if they happened to be Caucasians. More importantly, as a matter of fact, said American law, which was the first "Act to Establish a Bureau of Immigration and Naturalization and to Provide for a Uniform Rule for Naturalization of Aliens throughout the United States" contained no racial disqualification requirement, except as to Chinese, the Act of May 6, 1882 not being among those expressly repealed by this law, hence it is clear that when Act 2927 was enacted, subdivision (c) of its Section 1 could not have had any connotation of racial exclusion necessarily, even if it were traced back to its origin in the Act of the United States Congress of 1912 already mentioned above.¹⁶ Thus, it would seem that the rationalization in the quoted decisions predicated on the theory that the elimination of Section 1 of Act 2927 by Commonwealth Act 473 was purposely for no other end than the abolition of racial discrimination in our naturalization law has no clear factual basis.¹⁷

3. In view of these considerations, there appears to be no cogent reason why the construction adopted in the opinions of the Secretary of Justice referred to in the first *Ly Giok Ha* decision of the Chief Justice should not prevail. It is beyond dispute that the first paragraph of Section 15 of Commonwealth Act 473 is a reenactment of Section 13(a) of Act 2927, as amended by Act 3448, and that the latter is nothing but an exact copy, deliberately made, of Section 1994 of the Revised Statutes of the United States as it stood before its repeal in 1922.¹⁸ Before such repeal, the phrase "who might herself be lawfully naturalized" found in said Section 15 had a definite unmistakable construction uniformly followed in all courts of the United States that had had occasion to apply the same and which, therefore, must be considered as if it were written in the statute itself. It almost trite to say that when our legislators enacted said section, they knew of its unvarying construction in the United States and that, therefore, in adopting verbatim the American statute, they have in effect incorporated into the provision, as thus enacted, the construction given to it by the American courts as well as by the Attorney General of the United States and all administrative authorities charged with the implementation of the naturalization and immigration laws of that country. (*Lo Cham v. Ocampo*, 77 Phil., 635 [1946]; *Laxamana v. Baltazar*, 92 Phil., 32 [1952]; *Hartley v. Commissioner*, 295 U.S. 216, 79 L. ed. 1399, 55 S. Ct. 756 [1935]; *Helvering v. Winmill*, 305 U.S. 79, 83 L. ed. 52, 59 S. Ct. 45 [1938]; *Helvering v. R. J. Reynolds Tobacco Co.*, 306 U.S. 110, 83 L. ed. 536, 59 S. Ct. 423 [1939]. [p. 32, Memo of Amicus Curiae]).

A fairly comprehensive summary of the said construction by the American courts and administrative authorities is contained in *United States of America ex rel. Dora Sejnensky v. Robert E. Tod*, Commissioner of Immigration, Appt., 285 Fed. 523, decided November 14, 1922, 26 A. L. R. 1316 as follows:

"Section 1994 of the Revised Statutes (Comp. Stat. § 3948, 2 Fed. Sta. Anno. 2d ed. p. 117) provides as follows: 'Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.'

"Section 1994 of the Revised Stat is said to originate in the Act of Congress, of February 10, 1855 (10 Stat. at L. 604, chap. 71), which in its second section provided 'that any woman, who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen.'

"And the American Statute of 1855 is substantially a copy of the earlier British Statute 7 & 8 Vict. chap. 66, § 16, 1844, which provided that 'any woman married, or who shall be married, to a natural-born subject or person naturalized, shall be deemed and taken to be herself naturalized, and have all the rights and privileges of

a natural born subject.'

"The Act of Congress of September 22, 1922 (42 Stat. at L. 1021, chap. 411, Comp. Stat. § 4358b, Fed. Stat. Anna. Supp. 1922, p. 255), being 'An Act Relative to the Naturalization and Citizenship of Married Wo-men,' in § 2, provides 'that any wo-man who marries a citizen of the United States after the passage of this Act, . . . shall not become a citizen of the United States by reason of such marriage'

"Section 6 of the act also provides that 1994 of the Revised Statutes . . . are repealed.'

"Section 6 also provides that 'such repeal shall not terminate ci-tizenship acquired or retained under either of such sections, . . .' meaning §§ 2 and 6. So that this Act of September 22, 1922, has no appli-cation to the facts of the present case, as the marriage of the relator took place prior to its passage. This case, therefore, depends upon the meaning to be attached to 1994 of the Revised Statutes.

"In 1868 the Supreme Court, in *Kelly v. Owen*, 7 Wall. 496, 498, 19 L. ed. 283, 284, construed this pro-vision as found in the Act of 1855 as follows: 'The term, "who might lawfully be naturalized under the existing laws," only limits the appli-cation of the law to free white women. The previous Naturalization Act, existing at the time, only required that the person applying for its benefits should be "a free white per-son," and not an alien enemy.'

"This construction limited the ef-fect of the statute to those aliens who belonged to the class or race which might he lawfully naturalized, and did not refer to any of the other provisions of the naturalization laws as to residence or moral charac-ter, or to any of the provisions of the immigration laws relating to the exclusion or deportation of aliens.

"In 1880, in *Leonard v. Grant* (C. C.) 5 Fed. 11, District Judge Deady also construed the Act of 1855, de-claring that 'any woman who is now or may hereafter be married to a ci-tizen of the United States, and might herself be lawfully naturalized, shall be deemed a citizen.' He held that 'upon the authorities, and the reas-on, if not the necessity, of the case, the statute must be construed as in effect declaring that an alien wo-man, who is of the class or race that may be lawfully naturalized under the existing laws, and who marries a ci-tizen of the United States, is such a citizen also, and it was not neces-sary that it should appear affirmatively that she possessed the other qualifications at the time of her mar-riage to entitle her to naturalization.'

"In 1882, the Act of 1855 came before Mr. Justice Harlan, sitting in the circuit court, in *United States v. Kellar*, 13 Fed. 82. An alien woman, a subject of Prussia came to the United States and mar-ried here a naturalized citizen. Mr. Justice Harlan, with the concurrence of Judge Treat, held that upon her marriage she became ipso facto a citizen of the United States as ful-ly as if she had complied with all of the provisions of the statutes upon the subject of naturalization. He added: 'There can be no doubt of this, in view of the decision of the Supreme Court of the United States in *Kelly v. Owen*, 7 Wall. 496, 19 L. ed. 283.' The alien 'belonged to the class of persons' who might be lawfully naturalized.

"In 1904, in *Hopkins v. Fachant*, 65 C. C. A. 1, 130 Fed. 839, an alien woman came to the United States from France and entered the country contrary to the immigration laws. The immigration autho-rities took her into custody at the port of New York, with the view of deporting her. She applied for her release under a writ of habeas cor-pus, and pending the disposition of the matter she married a naturaliz-ed American citizen. The circuit court of appeals for the ninth cir-cuit held, affirming the court be-low that she was entitled to be discharged from custody. The court declared: 'The rule is well settled that her marriage to a naturalized citizen of the United States enti-tled her to be discharged. The sta-tus of the wife follows that of her husband, and by virtue of her marriage her husbands, . . . and domicil became her domicil.'

"In 1908, the circuit court for the district of Rhode Island in *Re Rustigian*, 165 Fed. 980, had before it the application of a husband for his final decree of naturalization. It appeared that at that time his wife was held by

the immigration authorities at New York on the ground that she was afflicted with a dangerous and contagious disease. Counsel on both sides agreed that the effect of the husband's naturalization would be to confer citizenship upon the wife. In view of that contingency District Judge Brown declined to pass upon the husband's application for naturalization, and thought it best to wait until it was determined whether the wife's disease was curable. He placed his failure to act on the express ground that the effect of naturalizing the husband might naturalize her. At the same time he expressed his opinion that the husband's naturalization would not effect her naturalization, as she was not one who could become lawfully naturalized. 'Her own capacity (to become naturalized),' the court stated, 'is a prerequisite to her attaining citizenship. If herself lacking in that capacity, the married status cannot confer it upon her.' Nothing, however, was actually decided in that case, and the views expressed therein are really nothing more than mere dicta. But, if they can be regarded as something more than that, we find ourselves, with all due respect for the learned judge, unable to accept them.

"In 1909, in *United States ex rel. Nicola v. Williams*, 173 Fed. 626, District Judge Learned Hand held that an alien woman, a subject of the Turkish Empire, who married an American citizen while visiting Turkey, and then came to the United States, could not be excluded, although she had, at the time of her entry, a disease which under the immigration laws would have been sufficient ground for her exclusion, if she had not had the status of a citizen. The case was brought into this court on appeal, and in 1911 was affirmed, in 106 C. C. A. 464, 184 Fed. 322. In that case, however, at the time the relators married, they might have been lawfully naturalized, and we said: 'Even if we assume the contention of the district attorney to be correct that marriage will not make a citizen of a woman who would be excluded under our immigration laws, it does not affect these relators.'

"We held that, being citizens, they could not be excluded as aliens; and it was also said to be inconsistent with the policy of our law that the husband should be a citizen and the wife an alien. The distinction between that case and the one now before the court is that, in the former case, the marriage took place before any order of exclusion had been made, while in this the marriage was celebrated after such an order was made. But such an order is a mere administrative provision, and has not the force of a judgment of a court, and works no estoppel. The administrative order is based on the circumstances that existed at the time the order of exclusion was made. If the circumstances change prior to the order being carried into effect, it cannot be executed. For example, if an order of exclusion should be based on the ground that the alien was at the time afflicted with a contagious disease, and it should be made satisfactorily to appear, prior to actual deportation, that the alien had entirely recovered from the disease, we think it plain that the order could not be carried into effect. So, in this case, if, after the making of the order of exclusion and while she is permitted temporarily to remain, she in good faith marries an American citizen, we cannot doubt the validity of her marriage, and that she thereby acquired, under international law and under 1994 of the Revised Statutes, American citizenship, and ceased to be an alien. There upon, the immigration authorities lost their jurisdiction over her, as that jurisdiction applies only to aliens, and not to citizens.

"In 1910, District Judge Dodge, in *Ex parte Kaprielian*, 188 Fed. 694, sustained the right of the officials to deport a woman under the following circumstances: She entered this country in July, 1910, being an alien and, having been born in Turkey. She was taken into custody by the immigration authorities in the following September, and in October a warrant for her deportation was issued. Pending hearings as to the validity of that order, she was paroled in the custody of her counsel. The ground alleged for her deportation was that she was afflicted with a dangerous and contagious disease at the time of her entry. One of the reasons assigned to defeat deportation was that the woman had married a citizen of the United States pending the proceedings for her deportation. Judge Dodge declared himself unable to believe that a marriage under such circumstances 'is capable of having the effect claimed, in view of the facts shown.' He held that it was no part of the intended policy of 1994 to annul or override the immigration laws, so as to authorize the admission into the country of the wife of a naturalized alien not otherwise entitled to enter, and that an alien woman, who is of a class of persons excluded by law from admission to the United States does not come within the provisions of that

section. The court relied wholly upon the dicta contained in the Rustigian Case. No other authorities were cited.

"In 1914, District Judge Neterer, in *Ex parte Grayson*, 215 Fed. 449, construed 1994 and held that where, pending proceedings to deport an alien native of France as an alien prostitute, she was married to a citizen of the United States, she thereby became a citizen, and was not subject to deportation until her citizenship was revoked by due process of law. It was his opinion that if, as was contended, her marriage was conceived in fraud, and was entered into for the purpose of evading the immigration laws and preventing her deportation, such fact should be established in a court of competent jurisdiction in an action commenced for the purpose. The case was appealed and the appeal was dismissed. 134 C. C. A. 666, 219 Fed. 1022.

"It is interesting also to observe the construction placed upon the language of the statute by the Department of Justice. In 1874, Attorney General Williams, 14 Ops. Atty. Gen. 402, passing upon the Act of February 10, 1855, held that residence within the United States for the period required by the naturalization laws was not necessary in order to constitute an alien woman a citizen, she having married a citizen of the United States abroad, although she never resided in the United States, she and her husband having continued to reside abroad after the marriage.

"In 1909, a similar construction was given to the Immigration Act of May 5, 1907, in an opinion rendered by Attorney General Wickersham. It appeared an unmarried woman, twenty-eight years of age and a native of Belgium, arrived in New York and went at once to a town in Nebraska, where she continued to reside. About fifteen months after her arrival she was taken before a United States commissioner by way of instituting proceedings under the Immigration Act (34 Stat. at L. 898, chap. 1134, Comp. Stat. 4242, 3 Fed. Stat. Anno. 2d ed. p. 637) for her deportation, on the ground that she had entered this country for the purpose of prostitution, and had been found an inmate of a house of prostitution and practicing the same within three years after landing. It appeared, however, that after she was taken before the United States commissioner, but prior to her arrest under a warrant by the Department of Justice, she was lawfully married to a native-born citizen of the United States. The woman professed at the time of her marriage an intention to abandon her previous mode of life and to remove with her husband to his home in Pennsylvania. He knew what her mode of life had been, but professed to believe in her good intentions. The question was raised as to the right to deport her, the claim being advanced that by her marriage she had become an American citizen and therefore could not be deported. The Attorney General ruled against the right to deport her as she had become an American citizen. He held that the words, 'who might herself be lawfully naturalized,' refer to a class or race who might be lawfully naturalized, and that compliance with the other conditions of the naturalization laws was not required. 27 Ops. Atty. Gen. 507.

"Before concluding this opinion, we may add that it has not escaped our observation that Congress, in enacting the Immigration Act of 1917, so as to provide, in 19, 'that the marriage to an American citizen of a female of the sexually immoral classes shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this act.'

"Two conclusions seem irresistibly to follow from the above change in the law:

"(1) Congress deemed legislation essential to prevent women of the immoral class avoiding deportation through the device of marrying an American citizen.

"(2) If Congress intended that the marriage of an American citizen with an alien woman of any other of the excluded classes, either before or after her detention, should not confer upon her American citizenship, thereby entitling her to enter the country, its intention would have been expressed, and 19 would not have been confined solely to women of the immoral class."

Indeed, We have examined all the leading American decisions on the subject and We have found no warrant for

the proposition that the phrase "who might herself be lawfully naturalized" in Section 1994 of the Revised Statutes was meant solely as a racial bar, even if loose statements in some decisions and other treatises and other writings on the subject would seem to give such impression. The case of *Kelly v. Owen*, supra, which appears to be the most cited among the first of these decisions¹⁹ simply held:

"As we construe this Act, it confers the privileges of citizenship upon women married to citizens of the United States, if they are of the class of persons for whose naturalization the previous Acts of Congress provide. The terms 'married' or 'who shall be married,' do not refer, in our judgment, to the time when the ceremony of marriage is celebrated, but to a state of marriage. They mean that, whenever a woman, who under previous Acts might be naturalized, is in a state of marriage to a citizen, whether his citizenship existed at the passage of the Act or subsequently, or before or after the marriage, she becomes, by that fact, a citizen also. His citizenship, whenever it exists, confers, under the Act, citizenship upon her. The construction which would restrict the Act to women whose husbands, at the time of marriage, are citizens, would exclude far the greater number, for whose benefit, as we think, the Act was intended. Its object, in our opinion, was to allow her citizenship to follow that of her husband, without the necessity of any application for naturalization on her part; and, if this was the object, there is no reason for the restriction suggested.

"The terms, 'who might lawfully be naturalized under the existing laws,' only limit the application of the law to free white women. The previous Naturalization Act, existing at the time only required that the person applying for its benefits should be 'a free white person,' and not an alien enemy. Act of April 14th, 1802, 2 Stat. at L. 153.

"A similar construction was given to the Act by the Court of Appeals of New York, in *Burton v. Burton*, 40 N. Y. 373; and is the one which gives the widest extension to its provisions."

Note that while the court did say that "the terms, 'who might lawfully be naturalized under existing laws' only limit the application to free white women"²⁰ it hastened to add that "the previous Naturalization Act, existing at the time, x x x required that the person applying for its benefits should be (not only) a 'free white person' (but also) x x x not an alien enemy." This is simply because under the Naturalization Law of the United States at the time the case was decided, the disqualification of enemy aliens had already been removed by the Act of July 30, 1813, as may be seen in the corresponding footnote hereof anon. In other words, if in the case of *Kelly v. Owen* only the race requirement was mentioned, the reason was that there was no other non-racial requirement or no more alien-enemy disqualification at the time; and this is demonstrated by the fact that the court took care to make it clear that under the previous naturalization law, there was also such requirement in addition to race. This is important, since as stated in *re Rustigian*, 165 Fed. Rep. 980, "The expression used by Mr. Justice Field, (in *Kelly v. Owen*) the terms 'who might lawfully be naturalized under existing laws' only limit the application of the law to free white women, must be interpreted in the application to the special facts and to the incapacities under the then existing laws," (at p. 982) meaning that whether or not an alien wife marrying a citizen would be a citizen was dependent, not only on her race and nothing more necessarily, but on whether or not there were other disqualifications under the law in force at the time of her marriage or the naturalization of her husband.

4. As already stated, in *Lo San Tuang*, *Choy King Tee* and the second *Ly Giok Ha*, the Court drew the inference that because Section 1 of Act 2927 was eliminated by Commonwealth Act 473, it follows that in place of the said eliminated section, particularly its subdivision (c), being the criterion of whether or not an alien wife "may be lawfully naturalized," what should be required is not only that she must not be disqualified under Section 4 but that she must also possess the qualifications enumerated in Section 2, such as those of age, residence, good moral character, adherence to the underlying principles of the Philippine Constitution, irreproachable conduct, lucrative employment or ownership of real estate, capacity to speak and write English or Spanish and one of the principal local languages, education of children in certain schools, etc., thereby implying that, in effect, said Section 2 has

been purposely intended to take the place of Section 1 of Act 2927. Upon further consideration of the proper premises, We have come to the conclusion that such inference is not sufficiently justified.

To begin with, nothing extant in the legislative history, which We have already examined above of the mentioned provisions has been shown or can be shown to indicate that such was the clear intent of the legislature. Rather, what is definite is that Section 15 is an exact copy of Section 1994 of the Revised Statutes of the United States, which, at the time of the approval of Commonwealth Act 473 had already a settled construction by American courts and administrative authorities.

Secondly, as may be gleaned from the summary of pertinent American decisions quoted above, there can be no doubt that in the construction of the identically worded provision in the Revised Statutes of the United States, (Section 1994, which was taken from the Act of February 10, 1855) all authorities in the United States are unanimously agreed that the qualifications of residence, good moral character, adherence to the Constitution, etc. are not supposed to be considered, and that the only eligibility to be taken into account is that of the race or class to which the subject belongs, the conceptual scope of which, We have just discussed.²¹ In the very case of *Leonard v. Grant*, *supra*, discussed by Justice Regala in *Lo San Tuang*, the explanation for such posture of the American authorities was made thus:

"The phrase, 'shall be deemed a citizen,' in section 1994, Rev. St., or as it was in the Act of 1855, *supra*, 'shall be deemed and taken to be a citizen,' while it may imply that the person to whom it relates has not actually become a citizen by ordinary means or in the usual way, as by the judgment of a competent court, upon a proper application and proof, yet it does not follow that such person is on that account practically any the less a citizen. The word 'deemed' is the equivalent of 'considered' or 'judged'; and, therefore, whatever an act of Congress requires to be 'deemed' or 'taken' as true of any person or thing, must, in law, be considered as having been duly adjudged or established concerning such person or thing, and have force and effect accordingly. When, therefore, Congress declares that an alien woman shall, under certain circumstances, be 'deemed' an American citizen, the effect when the contingency occurs, is equivalent to her being naturalized directly by an act of Congress, or in the usual mode thereby prescribed."

Unless We disregard now the long settled familiar rule of statutory construction that in a situation like this where-in our legislature has copied an American statute word for word, it is understood that the construction already given to such statute before its being copied constitute part of our own law, there seems to be no reason how We can give a different connotation or meaning to the provision in question. At least, We have already seen that the views sustaining the contrary conclusion appear to be based on inaccurate factual premises related to the real legislative background of the framing of our naturalization law in its present form.

Thirdly, the idea of equating the qualifications enumerated in Section 2 of Commonwealth Act 473 with the eligibility requirements of Section 1 of Act 2927 cannot bear close scrutiny from any point of view. There is no question that Section 2 of Commonwealth Act 473 is more or less substantially the same as Section 3 of Act 2927. In other words, Section 1 of Act 2927 co-existed already with practically the same provision as Section 2 of Commonwealth Act 473. If it were true that the phrase "who may be lawfully naturalized" in Section 13(a) of Act 2927, as amended by Act 3448, referred to the so-called racial requirement in Section 1 of the same Act, without regard to the provisions of Section 3 thereof, how could the elimination of Section 1 have the effect of shifting the reference to Section 3, when precisely, according to the American jurisprudence, which was prevailing at the time Commonwealth Act 473 was approved, such qualifications as were embodied in said Section 3, which had their counterpart in the corresponding American statutes, are not supposed to be taken into account and that what should be considered only are the requirements similar to those provided for in said Section 1 together with the disqualifications enumerated in Section 4?

Fourthly, it is difficult to conceive that the phrase "who might be lawfully naturalized" in Section 15 could have been intended to convey a meaning different than that given to it by the American courts and administrative authorities. As already stated, Act 3448 which contained said phrase and from which it was taken by Commonwealth Act 473, was enacted in 1928. By that time, Section 1994 of the Revised Statutes of the United States was no longer in force because it had been repealed expressly by the Act of September 22, 1922 which did away with the automatic naturalization of alien wives of American citizens and required, instead, that they submit to regular naturalization proceedings, albeit under more liberal terms than those of other applicants. In other words, when our legislature adopted the phrase in question, which, as already demonstrated, had a definite construction in American law, the Americans had already abandoned said phraseology in favor of a categorical compulsion for alien wives to be naturalized judicially. Simple logic would seem to dictate that, since our lawmakers, at the time of the approval of Act 3448, had two choices, one to adopt the phraseology of Section 1994 with its settled construction and the other to follow the new posture of the Americans of requiring judicial naturalization, and it appears that they have opted for the first, We have no alternative but to conclude that our law still follows the old or previous American law on the subject. Indeed, when Commonwealth Act 473 was approved in 1939, the Philippine Legislature, already autonomous then from the American Congress, had a clearer chance to disregard the old American law and make one of our own, or, at least, follow the trend of the Act of the U. S. Congress of 1922, but still, our legislators chose to maintain the language of the old law. What then is significantly important is not that the legislature maintained said phraseology after Section 1 of Act 2927 was eliminated, but that it continued insisting on using it even after the Americans had amended their law in order to provide for what is now contended to be the construction that should be given to the phrase in question. Stated differently, had our legislature adopted a phrase from an American statute before the American courts had given it a construction which was acquiesced to by those called upon to apply the same, it would be possible for Us to adopt a construction here different from that of the Americans, but as things stand, the fact is that our legislature borrowed the phrase when there was already a settled construction thereof, and what is more, it appears that our legislators even ignored the modification of the American law and persisted in maintaining the old phraseology. Under these circumstances, it would be in defiance of reason and the principles of Statutory construction to say that Section 15 has a nationalistic and selective orientation and that it should be construed independently of the previous American posture because of the difference of circumstances here and in VA the United States. It is always safe to say that in the construction of a statute, We cannot fall on possible judicial fiat or perspective when the demonstrated legislative point of view seems to indicate otherwise.

5. Viewing the matter from another angle, there is need to emphasize that in reality and in effect, the so-called racial requirements, whether under the American laws or the Philippine laws, have hardly been considered as qualifications in the same sense as those enumerated in Section 3 of Act 2927 and later in Section 2 of Commonwealth Act 473. More accurately, they have always been considered as disqualifications, in the sense that these who did not possess them were the ones who could not "be lawfully naturalized", just as if they were suffering from any of the disqualifications under Section 2 of Act 2927 and later those under Section 4 of Commonwealth Act 473, which, incidentally, are practically identical to those in the former law, except those in paragraphs (f) and (h) of the latter.²² Indeed, such is the clear impression anyone will surely get after going over all the American decisions and opinions quoted and/or cited in the latest USCA (1970), Title 8, section 1430, pp. 598-602, and the first decisions of this Court on the matter, *Ly Giok Ha* (1959) and *Ricardo Cua*, citing 23 with approval the opinions of the Secretary of Justice.²³ Such being the case, that is, that the so-called racial requirements were always treated as disqualifications in the same light as the other disqualifications under the law, why should their elimination not be viewed or understood as a subtraction from or a lessening of the disqualifications? Why should such elimination have instead the meaning that what were previously considered as irrelevant qualifications have become disqualifications, as seems to be the import of the holding in *Choy King*

Tee to the effect that the retention in Section 15 of Commonwealth Act 473 of the same language of what used to be Section 13 (a) of Act 2927 (as amended by Act 3448), notwithstanding the elimination of Section 1 of the latter, necessarily indicates that the legislature had in mind making the phrase in question "who may be lawfully naturalized" refer no longer to any racial disqualification but to the qualification under Section 2 of Commonwealth Act 473? Otherwise stated, under Act 2927, there were two groups of persons that could not be naturalized, namely, those falling under Section 1 and those falling under Section 2, and surely, the elimination of one group, i.e. those belonging to Section 1, could not have had, by any process of reasoning, the effect of increasing, rather than decreasing, the disqualifications that used to be before such elimination. We cannot see by what alchemy of logic such elimination could have converted qualifications into disqualifications, specially in the light of the fact that, after all, these are disqualifications clearly set out as such in the law distinctly and separately from qualifications and, as already demonstrated, in American jurisprudence, qualifications had never been considered to be of any relevance in determining "who might be lawfully naturalized", as such phrase is used in the statute governing the status of alien wives of American citizens, and our law on the matter was merely copied verbatim from the American statutes.

6. In addition to these arguments based on the applicable legal provisions and judicial opinions, whether here or in the United States, there are practical considerations that militate towards the same conclusions. As aptly stated in the motion for reconsideration of counsel for petitioner-appellee dated February 23, 1967, filed in the case of *Zits Ngo Burca v. Republic*, supra:

"Unreasonableness of requiring alien wife to prove 'qualifications' -

"There is one practical consideration that strongly militates against a construction that Section 15 of the law requires that an alien wife of a Filipino must affirmatively prove that she possesses the qualifications prescribed under Section 2, before she may be deemed a citizen. Such condition, if imposed upon an alien wife, becomes unreasonably onerous and compliance therewith manifestly difficult. The unreasonableness of such requirement is shown by the following:

"1. One of the qualifications required of an applicant for naturalization under Section 2 of the law is that the applicant 'must have resided in the Philippines for a continuous period of not less than ten years.' If this requirement is applied to an alien wife married to a Filipino citizen, this means that for a period of ten years at least, she cannot hope to acquire the citizenship of her husband. If the wife happens to be a citizen of a country whose law declares that upon her marriage to a foreigner she automatically loses her citizenship and acquires the citizenship of her husband, this could mean that for a period of ten years at least, she would be stateless. And even after having acquired continuous residence in the Philippines for ten years, there is no guarantee that her petition for naturalization will be granted, in which case she would remain stateless for an indefinite period of time.

"2. Section 2 of the law likewise requires of the applicant for naturalization that he 'must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or must have some known lucrative trade, profession, or lawful occupation.' Considering the constitutional prohibition against acquisition by an alien of real estate except in cases of hereditary succession (Art. X111, Sec. 5, Constitution), an alien wife desiring to acquire the citizenship of her husband must have to prove that she has a lucrative income derived from a lawful trade, profession or occupation. The income requirement has been interpreted to mean that the petitioner herself must be the one to possess the said income. (*Uy v. Republic*, G.R. No. L-19578, Oct. 27, 1964; *Tanpa Ong vs. Republic*, G.R. No. L-20605, June 30, 1965; *Li Tong Pek v. Republic*, G.R. No. L-20912, November 29, 1965). In other words, the wife must prove that she has a lucrative income derived from sources other than her husband's trade, profession or calling. It is of common knowledge, and judicial notice may be taken of the fact

that most wives in the Philippines do not have gainful occupations of their own. Indeed, Philippine Law, recognizing the dependence of the wife upon the husband, imposes upon the latter the duty of supporting the former. (Art. 291, Civil Code). It should be borne in mind that uni-versally, it is an accepted con-cept that when a woman marries, her primary duty is to be a wife, mother and housekeeper. If an a-lien wife is not to be remiss in this duty, how can she hope to acquire a lucrative income of her own to qualify her for citizen-ship?

"3. Under Section 2 of the law, the applicant for naturalization 'must have enrolled his minor children of school age, in any of the public schools or private schools recognized by the Office of the Private Education of the Philippines, where Philippine his-tory, government and civics are taught or prescribed as part of the school curriculum during the entire period of residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen.' If an alien woman has minor children by a previous mar-riage to another alien before she marries a Filipino, and such mi-nor children had not been enrolled in Philippine schools during her period of residence in the coun-try, she cannot qualify for naturalization under the interpreta-tion of this Court. The reason behind the requirement that chil-dren should be enrolled in recog-nized educational institutions is that they follow the citizen-ship of their father. (Chan Ho Lay v. Republic, G.R. No. L-5666, March 30, 1954; Tan Hi v. Republic, 88 Phil. 117 [1951]; Hao Lian Chu v. Repu-blic, 87 Phil. 668 [1950]; Yap Chin v. Republic, G.R. No. L-4177, May 29, 1953; Lim Lian Hong v. Republic, G.R. No. L-3575, Dec. 26, 1950). Conside-ring that said minor children by her first husband generally fol-low the citizenship of their a-lien father, the basis for such requirement as applied to her does not exist. Cessante ratione legis cessat ipsa lex.

"4. Under Section 3 of the law, the 10-year continuous resi-dence prescribed by Section 2 'shall be understood as reduced to five years for any petitioner (who is) married to a Filipino woman.' It is absurd that an a-lien male married to a Filipino wife should be required to reside only for five years in the Philip-pines to qualify for citizenship, whereas an alien woman married to a Filipino husband must reside for ten years.

"Thus under the interpretation given by this Court, it is more difficult for an alien wife related by marriage to a Fili-pino citizen to become such citizen, than for a foreigner who is not so relat-ed. And yet, it seems more than clear that the general purpose of the first paragraph of Section 15 was obviously to accord to an alien woman, by reason of her marriage to a Filipino, a pri-vilege not similarly granted to other aliens. It will be recalled that prior to the enactment of Act No. 3448 in 1928, amending Act No. 2927 (the old Naturalization Law), there was no law granting any special pri-vilege to alien wives of Filipinos. They were treated as any other for-eigner. It was precisely to remedy this situation that the Philippine legislature enacted Act No. 3448. On this point, the observation made by the Secretary of Justice in 1941 is enlightening:

'It is true that under Art-icle 22 of the (Spanish) Civil Code, the wife follows the na-tionality of the husband; but the Department of state of the United States on October 31, 1921, ruled that the alien wife of a Filipino citizen is not a Filipino citizen, pointing out that our Supreme Court in the leading case of Roa v. Collector of Customs (23 Phil. 315) held that Art-icles 17 to 27 of the Civil Code being political have been abrogated upon the ces-sion of the Philippine Islands to the United States. Accord-ingly, the stand taken by the Attorney-General prior to the enactment of Act No. 3448, was that marriage of alien women to Philippine citizens did not make the former ci-tizens of this country.' (Op. Atty. Gen, March 16, 1928)

'To remedy this anomalous condition, Act No. 3448 was enacted in 1928 adding sec-tion 13(a) to Act No. 2927 which provides that "any woman who is now or may hereafter be married to a citi-zen of the Philippine Islands, and who might her-self be lawfully naturaliz-ed, shall be deemed a citi-zen of the Philippine Islands.' (Op. No. 22, s. 1941; emphasis ours).

"If Section 15 of the Revised Natura-lization Law were to be interpreted, as this Court did, in such a way as to re-quire that the alien wife must prove the qualifications prescribed in Section 2, the privilege granted to alien wives would become illusory. It is submitted that such a construction, being contrary to the manifested object

of the statute, must, be rejected.

'A statute is to be construed with reference to its manifest object, and if the language is susceptible of two constructions, one which will carry out and the other defeat such manifest object, it should receive the former construction.' (In re National Guard, 71 Vt. 493, 45 A. 1051; *Singer v. United States*, 323 U.S. 338, 89 L. ed. 285. See also, *U.S. v. Navarro*, 19 Phil. 134 [1911]; *U. S. v. Toribio*, 15 Phil. 85 [1910].

'x x x A construction which will cause objectionable results should be avoided and the court will, if possible, place on the statute a construction which will not result in injustice, and in accordance with the decisions construing statutes, a construction which will result in oppression, hardship, or inconveniences will also be avoided, as will a construction which will prejudice public interest, or construction resulting in unreasonableness, as well as a construction which will result in absurd consequences.'

'So a construction should, if possible, be avoided if the result would be an apparent inconsistency in legislative intent, as has been determined by the judicial decisions, or which would result in futility, redundancy, or a conclusion not contemplated by the legislature; and the court should adopt that construction which will be the least likely to produce mischief. Unless plainly shown to have been the intention of the legislature, an interpretation which would render the requirements of the statute uncertain and vague is to be avoided, and the court will not ascribe to the legislature an intent to confer an illusory right. x x x' (82 C. J. S., Statutes, sec. 326, pp. 623-632)."

7. In *Choy King Tee and the second Ly Giok Ha*, emphasis was laid on the need for aligning the construction of Section 15 with "the national policy of selective admission to Philippine citizenship." But the question may be asked, is it reasonable to suppose that in the pursuit of such policy, the legislature contemplated to make it more difficult, if not practically impossible in some instances, for an alien woman marrying a Filipino to become a Filipina than any ordinary applicant for naturalization, as has just been demonstrated above? It seems but natural and logical to assume that Section 15 was intended to extend special treatment to alien women who by marrying a Filipino irrevocably deliver themselves, their possessions, their fate and fortunes and all that marriage implies to a citizen of this country, "for better or for worse". Perhaps there can and will be cases wherein the personal conveniences and benefits arising from Philippine citizenship may motivate such marriage, but must the minority, as such cases are bound to be, serve as the criterion for the construction of law? Moreover, it is not farfetched to believe that in joining a Filipino family, the alien woman is somehow disposed to assimilate the customs, beliefs and ideals of Filipinos among whom, after all, she has to live and associate, but surely, no one should expect her to do so even before marriage. Besides, it may be considered that in reality the extension of citizenship to her is made by the law not so much for her sake as for the husband. Indeed, We find the following observations anent the national policy rationalization in *Choy King Tee and Ly Giok Ha* (the second) to be quite persuasive:

"We respectfully suggest that this articulation of the national policy begs the question. The avowed policy of 'selective admission' more particularly refers to a case where citizenship is sought to be acquired in a judicial proceeding for naturalization. In such a case, the courts should no doubt apply the national policy of selecting only those who are worthy to become citizens. There is here a choice between accepting or rejecting the application for citizenship. But this policy finds no application in cases where citizenship is conferred by operation of law. In such cases, the courts have no choice to accept or reject. If the individual claiming citizenship by operation of law proves in legal proceedings that he satisfies the statutory requirements, the courts cannot do otherwise than to declare that he is a citizen of the Philippines. Thus, an individual who is able to prove that his father is a Philippine citizen, is a citizen of the Philippines, 'irrespective of his moral character; ideological beliefs, and identification with Filipino ideals, customs and traditions.' A minor child of a person naturalized under the law, who is able to prove the fact of his birth in the Philippines, is likewise a

ci-tizen, regardless of whether he has lucrative income, or he adheres to the principles of the Constitution. So it is with an alien wife of a Philippine citizen. She is required to prove only that she may herself be lawfully naturalized, i. e., that she is not one of the disqualified persons enumerated in Section 4 of the law, in order to establish her citizenship status as a fact.

"A paramount policy consideration of graver import should not be over-looked in this regard, for it explains and justifies the obviously deliberate choice of words. It is universally accepted that a State, in extending the privilege of citi-zenship to an alien wife of one of its citizens could have had no other objective than to maintain a unity of allegiance among the members of the family. (Nelson v. Nelson, 113 Neb. 453, 203 N. W. 640 [1925]; see also 'Convention on the Nationality of Married Women: Historical Background and Commentary.' UNITED NATIONS, De-partment of Economic and Social Affairs E/CN, 6/399, pp. 8 et seq.). Such ob-jective can only be satisfactorily achieved by allowing the wife to acquit citizenship derivatively through the husband. This is particularly true in the Philippines where tradi-tion and law has placed the husband as head of the family, whose personal sta-tus and decisions govern the life of the family group. Corollary to this, our laws look with favor on the unity and solidarity of the family (Art. 220, Civil Code), in whose preserva-tion the State has a vital and endur-ing interest. (See Art. 216, Civil Code). Thus, it has been said that by tradition in our country, there is a theoretic identity of person and in-terest between husband and wife, and from the nature of the relation, the home of one is that of the other. (See De la Viña v. Villareal, 41 Phil. 13). It should likewise be said that because of the theoretic identity of husband and wife, and the primacy of the husband, the nationality of the husband should be the nationality of the wife, and the laws upon one should be the law upon the other. For as the court, in Hopkins v. Fachant (9th Cir., 1904) 65 C. C. A. 1, 130 Fed. 839, held: 'The status of the wife follows that of the husband, x x x and by virtue of her marriage her husband's domicile became her domicile.' And the presumption under Philippine law being that the property relations of husband and wife are under the regime of conjugal partnership (Art. 119, Civil Code), the income of one is also that of the other.

"It is, therefore, not congruent with our cherished traditions of fa-mily unity and identity that a hus-band should be a citizen and the wife an alien, and that the national treat-ment of one should be different from that of the other. Thus, it cannot be that the husband's interests in property and business activities re-served by law to citizens should not form part of the conjugal partnership and be denied to the wife, nor that she herself cannot, through her own efforts but for the benefit of the partnership, acquire such interests. Only in rare instances should the identity of husband and wife be re-fused recognition, and we submit that in respect of our citizenship laws, it should only be in the instances where the wife suffers from the disqualifications stated in Section 4 of the Revised Naturalization Law." (Motion for Reconsideration, *Burca vs. Republic*, supra.)

With all these considerations in mind, We are per-suaded that it is in the best interest of all concerned that Section 15 of the Naturalization Law be given ef-fect in the same way as it was understood and construed when the phrase "who may be lawfully naturalized", found in the American statute from which it was borrowed and copied verbatim, was applied by the American courts and administrative authorities. There is merit, of course, in the view that Philippine statutes should be construed in the light of Philippine circumstances, and with par-ticular reference to our naturalization laws, We should realize the disparity in the circumstances between the United States, as the so-called "melting pot" of peoples from all over the world, and the Philippines as a developing country whose Constitution is nationalistic al-most in the extreme. Certainly, the writer of this opi-nion cannot be the last in rather passionately insisting that our jurisprudence should speak our own concepts and resort to American authorities, to be sure, entitled to admiration and respect, should not be regarded as source of pride and indisputable authority. Still, We cannot close our eyes to the undeniable fact that the provision of law now under scrutiny has no local origin and orien-tation; it is purely American, factually taken bodily from American law when the Philippines was under the do-minating influence of statutes of the United States Con-gress. It is indeed a sad commentary on the work of our own legislature of the late 1920's and 1930's that given the opportunity to break away from the old American pat-tern, it took no step in that direction. Indeed, even after America made it

patently clear in the Act of Congress of September 22, 1922 that alien women marrying Americans cannot be citizens of the United States without undergoing naturalization proceedings, our legislators still chose to adopt the previous American law of August 10, 1855 as embodied later in Section 1994 of the Revised Statutes of 1874, which, it is worth reiterating, was consistently and uniformly understood as conferring American citizenship to alien women marrying Americans ipso facto, without having to submit to any naturalization proceeding and without having to prove that they possess the special qualifications of residence, moral character, adherence to American ideals and American constitution, provided they could show they did not suffer from any of the disqualifications enumerated in the American Naturalization Law. Accordingly, We now hold, all previous decisions of this Court indicating otherwise notwithstanding, that under Section 15 of Commonwealth Act 473, an alien woman marrying a Filipino, native-born or naturalized, becomes ipso facto a Filipina provided she is not disqualified to be a citizen of the Philippines under Section 4 of the same law. Likewise, an alien woman married to an alien who is subsequently naturalized here follows the Philippine citizenship of her husband the moment he takes his oath as Filipino citizen, provided that she does not suffer from any of the disqualifications under said Section 4.

As under any other law rich in benefits for those coming under it, doubtless there will be instances where unscrupulous persons will attempt to take advantage of this provision of law by entering into fake and fictitious marriages or male fide matrimonies. We cannot as a matter of law hold that just because of these possibilities, the construction of the provision should be otherwise than as dictated inexorably by more ponderous relevant considerations, legal, juridical and practical. There can always be means of discovering such undesirable practices and every case can be dealt with accordingly as it arises.

III.

The third aspect of this case requires necessarily a re-examination of the ruling of this Court in *Burca*, supra, regarding the need of judicial naturalization proceedings before the alien wife of a Filipino may herself be considered or deemed a Filipino. If this case which, as already noted, was submitted for decision in 1964 yet, had only been decided earlier, before *Go Im Ty*, the foregoing discussions would have been sufficient to dispose of it. The Court could have held that despite her apparent lack of qualifications, her marriage to her co-petitioner made her a Filipina, without her undergoing any naturalization proceedings, provided she could sustain her claim that she is not disqualified under Section 4 of the law. But as things stand now, with the *Burca* ruling, the question We have still to decide is, may she be deemed a Filipina without submitting to a naturalization proceeding?

Naturally, if *Burca* is to be followed, it is clear that the answer to this question must necessarily be in the affirmative. As already stated, however, the decision in *Burca* has not yet become final because there is still pending with Us a motion for its reconsideration which vigorously submits grounds worthy of serious consideration by this Court. On this account, and for the reasons expounded earlier in this opinion, this case is as good an occasion as any other to re-examine the issue.

In the said decision, Justice Sanchez held for the Court:

"We accordingly rule that: (1) An alien woman married to a Filipino who desires to be a citizen of this country must apply therefor by filing a petition for citizenship reciting that she possesses all the qualifications set forth in Section 2 and none of the disqualifications under Section 4, both of the Revised Naturalization Law; (2) Said petition must be filed in the Court of First Instance where petitioner has resided at least one year immediately preceding the filing of the petition; and (3) Any action by any other office, agency, board or official, administrative or otherwise - other than the judgment of a competent court of justice - certifying or declaring that an alien wife of the Filipino citizen is also a Filipino citizen, is hereby declared null and void.

"3. We treat the present pe-tition as one for naturalization. Or, in the words of law, a 'petition for citizenship'. This is as it should be. Because a reading of the petition will reveal at once that efforts were made to set forth therein, and to prove afterwards, compliance with Sections 2 and 4 of the Revised Naturalization Law. The trial court itself apparently considered the petition as one for naturalization, and, in fact, declared petitioner 'a citizen of the Philippines.'"

In other words, under this holding, in order for an alien woman marrying a Filipino to be vested with Filipino citizenship, it is not enough that she pos-sesses the qualifications prescribed by Section 2 of the law and none of the disqualifications enumerated in its Section 4. Over and above all these, she has to pass thru the whole process of judicial naturali-zation, apparently from declaration of intention to oath-taking, before she can become a Filipina. In plain words, her marriage to a Filipino is absolute-ly of no consequence to her nationality vis-a-vis that of her Filipino husband; she remains to be the national of the country to which she owed allegiance before her marriage, and if she desires to be of one nationality with her husband, she has to wait for the same time that any other applicant for naturali-zation needs to complete, the required period of ten year residence, gain the knowledge of English or Spanish and one of the principal local languages, make her children study in Filipino schools, acquire real property or engage in some lawful occupation of her own independently of her husband, file her declaration of intention and after one year her application for natu-ralization, with the affidavits of two credible witnes-ses of her good moral character and other qualifications, etc., etc. until a decision is rendered in her favor, after which she has to undergo the two years of probation, and only then, but not before she takes her oath as citizen, will she begin to be considered and deemed to be a citizen of the Philippines. Brief-ly, she can become a Filipino citizen only by judicial declaration.

Such being the import of the Court's ruling, and it being quite obvious, on the other hand, upon a cursory reading of the provision in question, that the law intends by it to spell out what is the "effect of naturalization on (the) wife and children" of an alien, as plainly indicated by its title, and inasmuch as the language of the provision itself clearly conveys the thought that some effect beneficial to the wife is intended by it, rather than that she is not in any manner to be benefited thereby, it behooves Us to take a second hard look at the ruling, if only to see whether or not the Court might have overlooked any relevant consideration warranting a conclusion differ-ent from that contained therein. It is undeniable that the issue before Us is of grave importance, considering its consequences upon tens of thousands of persons affected by the ruling therein made by the Court, and surely, it is for Us to avoid, whenever possible, that Our decision in any case should produce any adverse effect upon them not contemplated either by the law or by the national policy it seeks to enforce.

AMICI CURIAE in the Burca case, respectable and im-pressive by their number and standing in the Bar and well known for their reputation for intellectual integrity, legal acumen and incisive and comprehensive resourcefulness, in research, truly evident in the quality of the memorandum they have submitted in said case, invite Our at-tention to the impact of the decision therein thus:

"The doctrine announced by this Honor-able Court for the first time in the pre-sent case - that an alien woman who marries a Philippine citizen not only does not ipso facto herself become a citizen but can acquire such citizenship only through ordinary naturalization proceed-ings under the Revised Naturalization Law, and that all administrative actions 'certifying or declaring' such woman to be a Philippine citizen are 'null and void' -has consequences that reach far beyond the confines of the present case. Con-siderably more people are affected, and affected deeply, than simply Mrs. Zita N. Burca. The newspapers report that as many as 15 thousand women married to Phi-lippine citizens are affected by this de-cision of the Court. These are women of many and diverse nationalities, including Chinese, Spanish, British, American, Co-lumbian, Finnish, Japanese, Chilean, and so on. These members of the community, some of whom have been married to citizens for two or three decades, have all exercised rights and, privileges re-served by law to Philippine citizens, They will have acquired, separately or in conjugal partnership with their citizen husbands, real property, and they will, have

sold and transferred such property. Many of these women may be in professions membership in which is limited to citizens. Others are doubtless stockholders or officers or employees in companies engage in business activities for which a certain percentage of Filipino equity content is prescribed by law. All these married women are now faced with possible divestment of personal status and of rights acquired and privileges exercised in reliance, in complete good faith, upon a reading of the law that has been accepted as correct for more than two decades by the very agencies of government charged with the administration of that law. We most respectfully suggest that judicial doctrines which would visit such comprehensive and far-reaching injury upon the wives and mothers of Philippine citizens deserve intensive scrutiny and re-examination."

To be sure, this appeal can be no less than what this Court attended to in *Gan Tsitung vs. Republic*, G. R. No. L-20819, Feb. 21, 1967, 19 SCRA 401 - when Chief Justice Concepcion observed:

"The Court realizes, however, that the rulings in the *Barretto* and *Delgado* cases - although referring to situations the equities of which are not identical to those obtaining in the case at bar - may have contributed materially to the irregularities committed therein and in other analogous cases, and induced the parties concerned to believe, although erroneously, that the procedure followed was valid under the law.

"Accordingly, and in view of the implications of the issue under consideration, the Solicitor General was required, not only, to comment thereon, but, also, to state 'how many cases there are, like the one at bar, in which certificates of naturalization have been issued after notice of the filing of the petition for naturalization had been published in the Official Gazette only once, within the periods (a) from January 28, 1950' (when the decision in *Delgado v. Republic* was promulgated) 'to May 29, 1957' (when the *Ong Son Cui* was decided) 'and (b) from May 29, 1957 to November 29, 1965' (when the decision in the present case was rendered).

"After mature deliberation, and in the light of the reasons adduced in appellant's motion for reconsideration and in the reply thereto of the Government, as well as of the data contained in the later, the Court holds that the doctrine laid down in the *Ong Son Cui* case shall apply and affect the validity of certificates of naturalization issued after, not on or before May 29, 1957."

Here We are met again by the same problem. In *Gan Tsitung*, the Court had to expressly enjoin the prospective application of its construction of the law made in a previous decision²⁴ which had already become final, to serve the ends of justice and equity. In the case at bar, We do not have to go that far. As already observed, the decision in *Burca* is still under reconsideration, while the ruling in *Lee Suau Ay*, *Lo San Tuang*, *Choy King Tee* and others that followed them have at the most become the law of the case only for the parties thereto. If there are good grounds therefor, all We have to do now is to re-examine the said rulings and clarify or modify them.

For ready reference, We quote Section 15:

"Sec. 15. Effect of the naturalization on wife and children. - Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines.

"Minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof.

"A foreign-born minor child, if dwelling in the Philippines at the time of the naturalization of the parents, shall automatically become a Philippine citizen, and a foreign-born minor child, who is not in the Philippines at the time the parent is naturalized, shall be deemed a Philippine citizen only during his minority, unless he begins to reside permanently in the Philippines when still a minor, in which case, he will continue to be a Philippine citizen even after becoming of age.

"A child born outside of the Philippines after the naturalization of his parent, Shall be considered a Philippine citizen, unless within one year after reaching the age of majority, he fails to register himself as a Philippine

citizen at the American Consulate of the country where he resides, and to take the necessary oath of allegiance."

It is obvious that the main subject-matter and purpose of the statute, the Revised Naturalization Law or Commonwealth Act 473, as a whole, is to establish a complete procedure for the judicial conferment of the status of citizenship upon qualified aliens. After laying out such a procedure, remarkable for its elaborate and careful inclusion of all safeguards against the possibility of any undesirable persons becoming a part of our citizenry, it carefully but categorically states the consequence of the naturalization of an alien undergoing such procedure it prescribes upon the members of his immediate family, his wife and children,²⁵ and, to that end, in no uncertain terms it ordains that: (a) all his minor children who have been born in the Philippines shall be "considered citizens" also; (b) all such minor children, if born outside the Philippines but dwelling here at the time of such naturalization "shall automatically be-come" Filipinos also, but those not born in the Philippines, and not in the Philippines at the time of such naturaliza-tion, are also "deemed citizens" of this country provided that they shall lose said status if they transfer their per-manent residence to a foreign country before becoming of age; (c) all such minor children, if born outside of the Philippines after such naturalization, shall also be "consi-dered" Filipino citizens, unless they expatriate themselves by failing to register as Filipinos at the Philippine (Ame-rican) Consulate of the country where they reside and take the necessary oath of allegiance; and (d) as to the wife, she "shall be deemed a citizen of the Philippines" if she is one "who might herself be lawfully naturalized".²⁶

No doubt whatever is entertained, so *Burca* holds very correctly, as to the point that the minor children, falling within the conditions of place and time of birth and resi-dence prescribed in the provision, are vested with Philip-pine citizenship directly by legislative fiat or by force of the law itself and without the need for any judicial pro-ceeding or declaration. (At p. 192, 19 SCRA.) Indeed, the language of the provision is not susceptible of any other interpretation. But it is claimed that the same expression "shall be deemed a citizen of the Philippines" in reference to the wife, does not necessarily connote the vesting of citizenship status upon her by legislative fiat because the antecedent phrase requiring that she must be one "who might herself be lawfully naturalized" implies that such status is intended to attach only after she has undergone the whole process of judicial naturalization required of any person desiring to become a Filipino. Stated otherwise, the ruling in *Burca* is that while Section 15 envisages and in-tends legislative naturalization as to the minor children, the same section deliberately treats the wife differently and leaves her out for the ordinary judicial naturalization.

Of course, it goes without saying that it is perfectly within the constitutional authority of the Congress of the Philippines to confer or vest citizenship status by legisla-tive fiat. (*U.S. v. Wong Kim Ark*, 169 U.S. 649, 42 L ed. 890 [1898]; See, 1 Tañada & Carreon, *Political Law of the Philippines* 152 [1961 ed.]) In fact, it has done so for par-ticular individuals, like two foreign religious prelates,²⁷ hence there is no reason it cannot do it for classes or groups of persons under general conditions applicable to all of the members of such class or group, like women who marry Filipinos, whether native-born or naturalized. The issue before Us in this case is whether or not the legislature has done so in the disputed provisions of Section 15 of the Na-turalization Law. And Dr. Vicente G. Sinco, one of the most respected authorities on political law in the Philippines²⁸ observes in this connection thus: "A special form of natu-ralization is often observed by some states with respect to wo-men. Thus in the Philippines a foreign woman married to a Filipino citizen becomes ipso facto naturalized, if she be-longs to any of the classes who may apply for naturalization under the Philippine Laws." (Sinco, *Phil. Political Law* 498-499 [10th ed. 1954]; emphasis ours; this comment is substan-tially reiterated in the 1962 edition, citing *Ly Giok Ha* and *Ricardo Cua*, *supra*.)

More importantly, it may be stated, at this juncture, that in construing the provision of the United States statutes from which our law has been copied,^{28-a} the American courts have held that the alien wife does not acquire

Ameri-can citizenship by choice but by operation of law. "In the Revised Statutes the words 'and taken' are omitted. The ef-fect of this statute is that every alien woman who marries a citizen of the United States becomes perforce a citizen her-self, without the formality of naturalization, and regard-less of her wish in that respect." (USCA 8, p. 601,[1970 ed.], citing Mackenzie v. Hare, 1913, 134 P. 713, 165 Cal. 766, affirmed 36 S. Ct. 106, 239 U.S. 299, 60 L ed. 297.)

We need not recount here again how this provision in question was first enacted as paragraph (a) of Section 13, by way of an insertion into Act 2927 by Act 3448 of Novem-ber 30, 1928, and that, in turn, said paragraph was copied verbatim, from Section 1994 of the Revised Statutes of the United States, which by that time already had a long ac-cepted construction among the courts and administrative authorities in that country holding that under such provi-sion an alien woman who married a citizen became, upon such marriage, likewise a citizen by force of law and as a consequence of the marriage itself without having to under-go any naturalization proceedings, provided that it could be shown that at the time of such marriage, she was not disqualified to be naturalized under the laws then in force. To repeat the discussion We already made of these undenia-ble facts would unnecessarily make this decision doubly ex-tensive. The only point which might be reiterated for em-phasis at this juncture is that whereas in the United States, the American Congress, recognizing the uniform construction of Section 1994 of the Revised Statutes to be as stated a-bove, and finding it desirable to avoid the effects of such construction, approved the Act of September 22, 1922 explicitly requiring all such alien wives to submit to judicial naturalization, albeit under more liberal terms than those for other applicants for citizenship, on the other hand, the Philippine Legislature, instead of following suit and adopt-ing such a requirement, enacted Act 3448 on November 30, 1928 which copied verbatim the aforementioned Section 1994 of the Revised Statutes, thereby indicating its preference to adopt the latter law and its settled construction ra-ther than the reform introduced by the Act of 1922.

Obviously, these considerations leave Us no choice. Much as this Court may feel that as the United States her-self has evidently found it to be an improvement of her na-tional policy vis-a-vis the alien wives of her citizens to discontinue their automatic incorporation into the body of her citizenry without passing through the judicial scrutiny of a naturalization proceeding, as it used to be before 1922, it seems but proper, without evidencing any bit of colonial mentality, that as a developing country, the Philippines should adopt a similar policy, unfortunately; the manner in which our own legislature has enacted our laws on the sub-ject, as recounted above, provides no basis for Us to cons-true said law along the line of the 1922 modification of the American Law. For Us to do so would be to indulge in judi-cial legislation which it is not constitutionally permissible for this Court to do. Worse, this Court would be going precisely against the grain of the implicit Legislative intent.

There is at least one decision of this Court before *Burca* wherein it seems it is quite clearly implied that this Court is of the view that under Section 16 of the Naturali-zation Law, the widow and children of an applicant for na-turalization who dies during the proceedings do not have to submit themselves to another naturalization proceeding in or-der to avail of the benefits of the proceedings involving the husband. Section 16 provides:

"SEC. 16. Right of widow and children of petitioners who have died. - In case a petitioner should die before the final decision has been rendered, his widow and minor children may continue the proceed-ings. The decision rendered in the case shall, so far as the widow and minor child-ren are concerned, produce the same legal effect as if it had been rendered during the life of the petitioner."

In *Tan Lin v. Republic*, G. R. No. L-13706, May 31, 1961, 2 SCRA 383, this Court held:

"Invoking the above provisions in their favor, petitioners-appellants argue (1) that under said Sec. 16, the widow and minor children are allowed to conti-nue the same proceedings and are not subs-tituted for the original petitioner; (2) that the qualifications of the original petitioner remain to be in issue and not those of the

widow and minor children, and (3) that said Section 16 applies whether the petitioner dies before or after final decision is rendered, but before the judgment becomes executory.

"There is force in the first and second arguments. Even the second sentence of said Section 16 contemplates the fact that the qualifications of the original petitioner remains the subject of inquiry, for the simple reason that it states that 'The decision rendered in the case shall, so far as the widow and minor children are concerned, produce the same legal effect as if it had been rendered during the life of the petitioner.' This phraseology emphasizes the intent of the law to continue the proceedings with the deceased as the theoretical petitioner, for if it were otherwise, it would have been unnecessary to consider the decision rendered, as far as it affected the widow and the minor children.

x x x x x

"The Chua Chian case (supra), cited by the appellee, declared that a dead person can not be bound to do things stipulated in the oath of allegiance, because an oath is a personal matter. Therein, the widow prayed that she be allowed to take the oath of allegiance for the deceased. In the case at bar, petitioner Tan Lin merely asked that she be allowed to take the oath of allegiance and the proper certificate of naturalization, once the naturalization proceedings of her deceased husband, shall have been completed, not on behalf of the deceased, but on her own behalf and of her children, as recipients of the benefits of his naturalization. In other words, the herein petitioner proposed to take the oath of allegiance, as a citizen of the Philippines, by virtue of the legal provision that 'any woman who is now or may hereafter be married to a citizen of the Philippines and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines. Minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof.' (Section 15, Commonwealth Act No. 473). The decision granting citizenship to Lee Pa and the record of the case at bar, do not show that the petitioning widow could not have been lawfully naturalized, at the time Lee Pa filed his petition, apart from the fact that his 9 minor children were all born in the Philippines. (Decision, In the Matter of the Petition of Lee Pa to be admitted a citizen of the Philippines, Civil Case No. 16287, CFI, Manila, Annex A; Record on Appeal, pp. 8-11). The reference to Chua Chian case is, therefore, premature."

Section 16, as may be seen, is a parallel provision to Section 13. If the widow of an applicant for naturalization as Filipino, who dies during the proceedings, is not required to go through a naturalization proceeding, in order to be considered as a Filipino citizen hereof, it should follow that the wife of a living Filipino cannot be denied the same privilege. This is plain common sense and there is absolutely no evidence that the Legislature intended to treat them differently.

Additionally, We have carefully considered the arguments advanced in the motion for reconsideration in *Burca*, and We see no reason to disagree with the following views of counsel:

"It is obvious that the provision itself is a legislative declaration of who may be considered citizens of the Philippines. It is a proposition too plain to be disputed that Congress has the power not only to prescribe the mode or manner under which foreigners may acquire citizenship, but also the very power of conferring citizenship by legislative fiat. (*U. S. v. Wong Kim Ark*, 169 U. S. 649, 42 L. Ed. 890 [1898]; see 1 Tañada & Carreon, *Political Law of the Philippines* 152 [1961 ed.]). The Constitution itself recognizes as Philippine citizens 'Those who are naturalized in accordance with law' (Section 1[5], Article IV, Philippine Constitution). Citizens by naturalization, under this provision, include not only those who are naturalized in accordance with legal proceedings for the acquisition of citizenship, but also those who acquire citizenship by 'derivative naturalization' or by operation of law, as for example, the 'naturalization' of an alien wife through the naturalization of her husband, or by marriage of an alien woman to a citizen. (See Tañada & Carreon, 22. *op cit. supra*, at 152, 172; Velayo, *Philippine citizenship and Naturalization* 2 [1965 ed.]; 1 Paras, *Civil Code* 186 [1967 ed.]; see also 3 Hackworth, *Digest of International Law* 3).

"The phrase 'shall be deemed a citizen of the Philippines' found in Section 15 of the Revised Naturalization Law clearly manifests an intent to confer citizenship. Construing a similar phrase found in the old U. S. naturalization law (Revised Statutes, 1994), American courts have uniformly taken it to mean that upon her marriage, the alien woman becomes by operation of law a citizen of the United States as fully as if she had complied with all the provisions of the statutes upon the subject of naturalization. (U. S. v. Keller, 13 F. 82; U.S. Ex rel. Sejnensky v. Tod, 225 F. 523, 26 A.L.R. 1316; see also Opinions of the US Attorney General dated June 4, 1874 [14 Op. 402], July 20, 1909 [27 Op. 507], December 1, 1910 [28 Op. 508], Jan. 15, 1920 [32 Op. 209] and Jan. 12, 1923 [33 Op. 398]).

"The phrase, 'shall be deemed a citizen', in Section 1994 Revised Statute (U.S. Comp. Stat. 1091, 1268) or as it was in the Act of 1855 (10 Stat. at L. 604, Chapter 71, Sec. 2), 'shall be deemed and taken to be a citizen', while it may imply that the person to whom it relates has not actually become a citizen by the ordinary means or in the usual way, as by the judgment of a competent court, upon a proper application and proof, yet it does not follow that such person is on that account practically any the less a citizen. The word 'deemed' is the equivalent of 'considered' or 'judged', and therefore, whatever an Act of Congress requires to be 'deemed' or 'taken' as true of any person or thing must, in law, be considered as having been duly adjudged or established concerning such person or thing, and have force and effect accordingly. When, therefore, Congress declares that an alien woman shall, under, certain circumstances, be 'deemed' an American citizen, the effect when the contingency occurs, is equivalent to, her being naturalized directly by an Act of Congress or in the usual mode thereby prescribed.' (Van Dyne, Citizenship of the United States 239, cited in Velayo, Philippine Citizenship and Naturalization 146-147 [1965 ed.]; emphasis ours).

"That this was likewise the intent of the Philippine legislature when it enacted the first paragraph of Section 15 of the Revised Naturalization Law is shown by a textual analysis of the entire statutory provision. In its entirety, Section 15 reads:

(See supra)

The phrases 'shall be deemed,' 'shall be considered,' and 'shall automatically become,' as used in the above provision, are undoubtedly synonymous. The leading idea or purpose of the provision was to confer Philippine citizenship by operation of law upon certain classes of aliens as a legal consequence, of their relationship, by blood or by affinity, to persons who are already citizens of the Philippines. Whenever the fact of relationship of the persons enumerated in the provision concurs with the fact of citizenship of the person to whom they are related, the effect is for said persons to become 'ipso facto' citizens of the Philippines. 'Ipso facto' as here used does not mean that all alien wives and all minor children of Philippine citizens, from the mere fact of relationship, necessarily become such citizens also. Those who do not meet the statutory requirements do not ipso facto become citizens; they must apply for naturalization in order to acquire such status. What it does mean, however, is that in respect of those persons enumerated in Section 15, the relationship to a citizen of the Philippines is the operative fact which establishes the acquisition of Philippine citizenship by them. Necessarily, it also determines the point of time at which such citizenship commences. Thus, under the second paragraph of Section 15, a minor child of a Filipino naturalized under the law, who was born in the Philippines, becomes ipso facto a citizen of the Philippines from the time the fact of relationship concurs with the fact of citizenship of his parent, and the time when the child became a citizen does not depend upon the time that he is able to prove that he was born in the Philippines. The child may prove some 25 years after the naturalization of his father that he was born in the Philippines and should, therefore, be 'considered' a citizen thereof. It does not mean that he became a Philippine citizen only at that later time. Similarly, an alien woman who married a Philippine citizen may be able to prove only some 25 years after her marriage (perhaps, because it was only 25 years after the marriage that her citizenship status became in question), that she is one who 'might herself be lawfully naturalized.' It is not reasonable to conclude that she acquired Philippine citizenship only after she had proven that she 'might herself be lawfully naturalized.'

"The point that bears emphasis in this regard is that in adopting the very phraseology of the law, the legislature

could not have intended that an alien wife should not be deemed a Philippine citizen unless and until she proves that she might herself be lawfully naturalized. Far from it, the law states in plain terms that she shall be deemed a citizen of the Philippines if she is one 'who might her-self be lawfully naturalized.' The proviso that she must be one 'who might herself be lawfully naturalized' is not a condition precedent to the vesting or acquisition of citizenship; it is only a condition or a state of fact necessary to establish her citizenship as a *factum probandum*, i. e., as a fact established and proved in evidence. The word 'might; as used in that phrase, precisely implies that at the time of her marriage to a Philippine citizen, the alien woman 'had (the) power' to become such a citizen herself under the laws then in force. (*Owen v. Kelly*, 6 DC 191 [1867], *aff'd Kelly v. Owen*, 76 US 496, 7 Wall 496, 19 L ed 283 [1869]). That she establishes such power long after her marriage does not alter the fact that at her marriage, she became a citizen.

"(This Court has held) that 'an alien wife of a Filipino citizen may not acquire the status of a citizen of the Philippines unless there is proof that she herself may be lawfully naturalized' (Decision, pp. 3-4). Under this view, the 'acquisition' of citizenship by the alien wife depends on her having proven her qualifications for citizenship, that is, she is not a citizen unless and until she proves that she may herself be lawfully naturalized. It is clear from the words of the law that the proviso does not mean that she must first prove that she 'might herself be lawfully naturalized' before she shall be deemed (by Congress, not by the courts) a citizen. Even the 'uniform' decisions cited by this Court (at fn. 2) to support its holding did not rule that the alien wife becomes a citizen only after she has proven her qualifications for citizenship. What those decisions ruled was that the alien wives in those cases failed to prove their qualifications and therefore they failed to establish their claim to citizenship. Thus in *Ly Giok Ha v. Galang*, 101 Phil. 459 [1957] the case was remanded to the lower court for determination of whether petitioner, whose claim to citizenship by marriage to a Filipino was disputed by the Government, 'might herself be lawfully naturalized,' for the purpose 'of proving her alleged change of political status from alien to citizen' (at 464). In *Cua v. Board*, 101 Phil. 521 [1957], the alien wife who was being deported, claimed that she was a Philippine citizen by marriage to a Filipino. This Court finding that there was no proof that she was not disqualified under Section 4 of the Revised Naturalization Law, ruled that: 'No such evidence appearing on record, the claim of assumption of Philippine citizenship by Tijoe Wu Suan, upon her marriage to petitioner, is untenable.' (at 523) It will be observed that in these decisions cited by this Court, the lack of proof that the alien wives 'might (themselves) be lawfully naturalized' did not necessarily imply that they did not become, in truth and in fact, citizens upon their marriage to Filipinos. What the decisions merely held was that these wives failed to establish their claim to that status as a proven fact.

"In all instances where citizenship is conferred by operation of law, the time when citizenship is conferred should not be confused with the time when citizenship status is established as a proven fact. Thus, even a natural-born citizen of the Philippines, whose citizenship status is put in issue in any proceeding, would be required to prove, for instance, that his father is a citizen of the Philippines in order to factually establish his claim to citizenship. His citizenship status commences from the time of birth, although his claim thereto is established as a fact only at a subsequent time. Likewise, an alien woman who might herself be lawfully naturalized becomes a Philippine citizen at the time of her marriage to a Filipino husband, not at the time she is able to establish that status as a proven fact by showing that she might herself be lawfully naturalized. Indeed, there is no difference between a statutory declaration that a person is deemed a citizen of the Philippines provided his father is such citizen from a declaration that an alien woman married to a Filipino is a citizen of the Philippines provided she might herself be lawfully naturalized. Both become citizens by operation of law; the former becomes a citizen ipso facto upon birth; the later ipso facto upon marriage.

"It is true that unless and until the alien wife proves that she might herself be lawfully naturalized, it cannot be said that she has established her status as a proven fact. But neither can it be said that on that account, she did not become a citizen of the Philippines. If her citizenship status is not questioned in any legal proceeding, she obviously has no obligation to establish her status as a fact. In such a case, the presumption of law should be that she is what she claims to be. (*U. S. v. Roxas*, S Phil. 375 [1905]; *Hila-do v. Assad*, 51 O.G. 4527 [1955]). There is a presumption that a representation shown to have been made is true. (*Aetna Indemnity Co.*

v. George A. Fuller, Co., 73 A. 738, 74 A. 369, 111 ME. 321)."

The question that keeps bouncing back as a consequence of the foregoing views is, what substitute is there for naturalization proceedings to enable the alien wife of a Philippine citizen to have the matter of her own citizenship settled and established so that she may not have to be called upon to prove it everytime she has to perform an act or enter into a transaction or business or exercise a right reserved only to Filipinos? The ready answer to such, question is that as the laws of our country, both substantive and procedural, stand today, there is no such procedure, but such paucity is no proof that the citizenship under discussion is not vested as of the date of marriage or the husband's acquisition of citizenship, as the case may be, for the truth is that the same situation obtains even as to native-born Filipinos. Everytime the citizenship of a person is material or indispensable in a judicial or administrative case, whatever the corresponding Court or administrative authority decides therein as to such citizenship is generally not considered as *res adjudicata*, hence it has to be threshed out again and again as the occasion may demand. This, as we view it, is the sense in which Justice Dizon referred to "appropriate proceeding" in *Brito v. Commissioner*, *supra*. Indeed, only the good sense and judgment of those subsequently inquiring into the matter may make the effort easier or simpler for the persons concerned by relying somehow on the antecedent official findings, even if these are not really binding.

It may not be amiss to suggest, however, that in order to have a good starting point and so that the most immediate relevant public records may be kept in order, the following observations in Opinion No. 38, series of 1958, of then Acting Secretary of Justice Jesus C. Barrera, may be considered as the most appropriate initial step by the interested parties:

"Regarding the steps that should be taken by an alien woman married to a Filipino citizen in order to acquire Philippine citizenship, the procedure followed in the Bureau of Immigration is as follows: The alien woman must file a petition for the cancellation of her alien certificate of registration alleging, among other things, that she is married to a Filipino citizen and that she is not disqualified from acquiring her husband's citizenship pursuant to section 4 of Commonwealth Act No. 473, as amended. Upon the filing of said petition which should be accompanied or supported by the joint affidavit of the petitioner and her Filipino husband to the effect that the petitioner does not belong to any of the groups disqualified by the cited section from becoming naturalized Filipino citizen (please see attached CEB Form 1), the Bureau of Immigration conducts an investigation and thereafter promulgates its order or decision granting or denying the petition."

Once the Commissioner of Immigration cancels the subject's registration as an alien, there will probably be less difficulty in establishing her Filipino citizenship in any other proceeding, depending naturally on the substance and vigor of the opposition.

Before closing, it is perhaps best to clarify that this third issue we have passed upon was not touched by the trial court, but as the point is decisive in this case, the Court prefers the matter be settled once and for all now.

IN VIEW OF ALL THE FOREGOING, the judgment of the Court *a quo* dismissing appellants' petition for injunction is hereby reversed and the Commissioner of Immigration and/or his authorized representative is permanently enjoined from causing the arrest and deportation and the confiscation of the bond of appellant Lau Yuen Yeung, who is hereby declared to have become a Filipino citizen from and by virtue of her marriage to her co-appellant Moy Ya Lim Yao alias Edilberto Aguinaldo Lim, a Filipino citizen on January 25, 1962. No costs.

Concepcion, C.J., Zaldivar, and Makasiar, JJ., concur in the dissenting opinion of Justice Reyes.

Reyes, J.B.L., J., dissents in separate opinion.

Dizon, Castro, Teehankee, and Villamor, JJ., concur.

Makalintal, J., reserves his separate concurring opinion.

Fernando, J., concurs except as to the interpretation accorded some American decision as to which he is not fully

persuaded.

[1] Followed in *Kua Suy, etc., et al. vs. The Commission-er of Immigration*, G. R. No. L-13790, promulgated Oct. 31, 1963, 9 SCRA 300; *Lu Choy Fa vs. Commissioner*, G. R. No. L-20597, Nov. 29, 1963, 9 SCRA 604; the other cases are discussed in the opinion.

[2] Justices Makalintal and Castro concurred only in the result.

[3] *Kua Suy v. Commissioner*, G.R. No. L-13790, Oct. 31, 1963, 9 SCRA 300; *Lo San Tuang v. Galang*, G.R. No. L-18775, Nov. 30, 1963, 9 SCRA 638; *Sun Peck Yong v. Commissioner*, G.R. No. L-20784, Dec. 27, 1963, 9 SCRA 874; *Tong Siok Sy v. Vivo*, G.R. No. L-21136, Dec. 27, 1963, 9 SCRA 876; *Choy King Tee v. Galang*, G.R. No. L-18351, March 26, 1965, 13 SCRA 402; *Austria v. Con-chu*, G.R. No. L-20716, June 22, 1965 14 SCRA 336; *Brito v. Commissioner*, G.R. No. L-16829, June 30, 1965, 14 SCRA 539; *Ly Giok Ha v. Galang (2nd)*, G.R. No. L--21332, March 18, 1966, 16 SCRA 414; *Go Im Ty v. Rep.*, G.R. No. L-17919, July 30, 1966, 17 SCRA 797.

[4] *Supra*, (101 Phil. 459)

See, also *Ops.*, Sec. of Justice, No. 28, s. 1950; No. 96, a. 1949; Nos. 43, 58, 98 and 281, s. 1948; No. 95, s. 1941; Nos. 79 and 168, s. 1940.

[5] In the deliberations, Chief Justice Concepcion ex-plained that his opinion was not meant to give that impression.

[6] Justice Barrera penned the decision in *Sun Peck Yong*, *supra*, and *Tong Siok v. Vivo*, *supra*.

Section 15, Commonwealth Act No. 473; *Ly Giok Ha @ Wy Giok Ha v. Galang*, 54 Off. Gaz. 356.

[7] To avoid repetition, the pertinent portions of the opi-nion will be quoted in a more appropriate place la in this decision.

[8] G. R. No. L-21332, March 18, 1966, 16 SCRA 414.

[9] Pertinent portions of the opinion of Justice Reyes will be quoted later in a more appropriate place in this decision.

[10] 17 SCRA 797.

[11] See *id.*, pp. 801-804.

12 One can easily perceive from the language of Justice Makalintal in *Choy King Tee* that he was expressing the consensus of the Court's membership then rather than his own personal views.

13 The law firms PAREDES, POBLADOR & NAZARENO; LICHUACO, PICAZO & AGCAOILI; MEER, MEER & MEER; PONCE ENRILE, SIGUION REYNA, MONTECILLO & BELO; RAMIREZ & ORTIGAS; SALVA, CHUA & ASSO.; and SYCIP, SALAZAR, LUNA, MANALO & FELICIANO.

14 See quotation from *Lo San Tuang* earlier on pp. 27-32 of this opinion.

15 See opinion of the Secretary of Justice, No. 79, s. 1940.

16 For ready reference, attached as an appendix of this decision is a brief study of all the naturalization laws of the United States from 1790 to 1970 showing how the matter of qualifications and disqualifica-tions, whether racial

or otherwise, have been treat-ed in the said statutes, from which it can be readily seen that the disqualification of alien wives from becoming citizens has not been always exclusively on racial grounds during the period that the Act of Feb. 10, 1855 and, later, section 1994 of the Revised Statutes were in force.

17 The statement in Sinco's book cited by Justice Regala in *Lo San Tuang* does not indicate any authoritative source. In any event, for the reasons already stated the racial motive could at most be only one of the reasons for the elimination of Section 1.

18 A more extensive discussion of the relevance of this repeal of 1922 is made further in this opinion.

19 Decided, April 15, 1869, next to *Burton v. Burton*, 40 N. Y. 373.

20 More accurately, the phrase "free white persons", does not only refer to people of the white race but also to non-slaves.

21 In this connection, it is to be noted that all the na-turalization laws of the United States from 1790 pro-vided for such qualifications of residence, good moral character, adherence to the Constitution.

22 (f) Persons who, during the period of their residence in the Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, tradi-tions, and ideals of the Filipinos;

(h) Citizens or subjects of a foreign country other than the United States, whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof.

23 After *Ly Giok Ha and Cua*, the Secretary of Justice found more reason to sustain the previous view of the Department on the matter. See opinions already cited.

24 *Ong Sun Cui v. Republic*, G. R. No. L-9858, May 29, 1957, 101 Phil. 649.

25 Somehow, the language of the whole law conveys the idea that only male aliens are contemplated for judicial naturalization.

26 Three possible situations are contemplated, namely: (a) the woman is already married to the alien before the latter's naturalization; (b) she marries him af-ter such naturalization; or (c) she marries a native-born Filipino; in all these instances, the effect of marriage is the same.

27 Brother Connon of La Salle College and Father Moran of Ateneo University.

28 Former Dean of the College of Law, U.P. and later President of the University, now delegate to the Cons. Convention of 1971.

28-a Sec. 1994 Revised Statutes

It should be observed, parenthetically, that by its very nature, citizenship is one of the most difficult facts to prove.

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DISSENTING OPINION

REYES, J.B.L., J.:

I regret not being able to assent to the opinion of Mr. Justice Barredo. Without prejudice to a more extended opinion and in order not to delay the release of the decision, I am expressing here the basic reasons for my disconformity.

The pivotal problem is whether the provision of section 15 of our Naturalization Law (Commonwealth Act No. 473) requires that an alien woman, married to a Filipino citizen, must prove that she possesses all the qualifications and none of the disqualifications prescribed by said law, in order to be deemed a Filipino citizen. The affirmative has been the constant doctrine of this Court since 1957, in the first *Ly Giok Ha* case (101 Phil. 459) or at the very least since 1959, in *Lee Suan Sy vs. Galang*, 106 Phil. 713.

This established doctrine would now be set aside primarily on the basis that section 15 of our Naturalization Law is a verbatim reproduction or exact copy of section 1994 of the Revised Statutes of the United States (Act of Congress of February 10, 1855); that because said section of the Revised Statutes had been uniformly construed by American courts as requiring merely that the woman marrying a citizen should not be disqualified herself from becoming a citizen, that a similar interpretation must be given to the aforesaid section 15 of our own Naturalization Act.

This view might be tenable if the Philippine statute had been in its entirety a reproduction of the American model. But where the coincidence is limited to a section of the Philippine statute, which taken as a whole is different in requirements and spirit I submit that the rule advocated by the main opinion does not apply, and that our section 15 should be construed conformably to the context and intendment of the statute of which it is a part, and in harmony with the whole.

It is worth noting that the American law of naturalization stresses primarily the disqualifications for citizenship (see USCA, Title 8, sec. 363 to 366 and 378). The only positive qualifications are "bona fide intention to become a citizen of the United States and to renounce for-ever all allegiance and fidelity" to a previous sovereign (Do., sec. 372) and residence for the specified period. This is particularly true of the American law at the time the first law was enacted concerning acquisition of citizenship by alien women married to U.S. citizens (the Act of Feb-ruary 10, 1855). Under such conditions, it is understandable that the interpretation of the words "who might herself lawfully be naturalized" should be that the marrying alien woman should not be disqualified from becoming a citizen.

But our naturalization law separates qualifications from disqual-ifications; the positive qualifications under section 3 thereof express a policy of restriction as to candidates for naturalization as much as the disqualifications under section 4. And it has been shown in our decision in the second *Ly Giok Ha* case (*Ly Giok Ha vs. Galang*, G.R. No. L-21332, March 18, 1966, 16 SCRA 416) that those not disqualified under section 4 could not necessarily qualify under section 3, even if the residence qualification were disregarded. In other words, by giving to section 15 of our Naturalization Law the effect of excluding only those women suffering from disqualification under section 3 could result in admitting to citizenship women that section 2 intends to exclude in these circum-s-tances, I do not see why the American interpretation of the words "who might herself he lawfully naturalized" should be considered binding in this jurisdiction.

The spirit of the American law, decidedly favorable to the absorp-tion of immigrants, is not embodied in our Constitution and laws, because of the nationalistic spirit of the latter.

In effect, the main decision introduces marriage to a citizen as a means of acquiring citizenship, a way not

contemplated by Article IV of the Constitution.

I am not unaware of the fact that the decisions of this Court have made very difficult the acquisition of citizenship by alien woman marry-ing Filipinos. But the remedy lies in a change of the statute. And it is not amiss to observe here that since 1959, when the present doctrine on the matter was adopted, the Legislature has not expressed any dissent therefrom, when it could have easily altered or clarified the legal pro-visions affected if Congress were convinced that this Court had misinter-pret ed its intent.

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