

**IN THE MATTER OF THE WILL OF JENNIE RIDER BABCOCK.
BEATRICE BABCOCK TEMPLETON, PETITIONER AND APPELLEE, VS.
WILLIAM RIDER BABCOCK, OPPONENT AND APPELLANT.**

G.R. No. 28328. October 02, 1928

Ponente: STREET, J.

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STREET, J.:

Appeal from an order of the Court of First Instance of Manila admitting to probate the holographic will of Jennie Rider Babcock.

The petition in this case was filed in the Court of First Instance of Manila on September 8, 1926, by Beatrice Babcock Templeton to secure probate of a paper writing purporting to express the wishes of Jennie Rider Babcock, deceased, with reference to the post mortem disposition of all her property, consisting of corporate stock, jewelry, personal effects and money. This paper bears date of May 26, 1926, is written wholly in the handwriting of the deceased and bears her proper signature. It was found among the effects of the deceased shortly after her death, which occurred on September 3, 1926. When found, it was contained in an envelope indorsed with the name of her daughter, Mrs. G. D. Templeton, and son, Mr. W. R. Babcock.

The purport of the paper is to the effect that the writer leaves her stock and money to her three grandchildren, bearing the surname Templeton, namely, G. Douglas Templeton, jr., Constance Babcock Templeton, and Billy Babcock Templeton, but the writer further states that all interest and dividends are to be given to her only daughter, Mrs. Templeton, as well as her jewelry and personal effects "for their support until the youngest is of age"

The aforesaid instrument is admittedly of a testamentary character, but it is not executed as a will under the provisions of law generally governing the execution of the wills made in the Philippine Islands. The instrument therefore is not offered for probate under section 618 and related provisions of the Code of Civil Procedure but under section 636, which authorizes probate by our courts of a will made within the Philippine Islands by a citizen or subject of another state or country, when such will is executed in accordance with the law of the state or country of which the testator is a citizen or subject, and which might be proved under the law of such state or country.

It is alleged in the petition that the testatrix was at the time of her death a resident of the State of California, though temporarily residing in Manila at the time of her death; and the parties have agreed that this paper could be proved in the State of California as the holographic will of the deceased. The sole question in controversy therefore now is, whether the testatrix, at the time the will was made, had the status of a citizen of the State of California, as required by section 636 of our Code of Civil Procedure. But, under the first paragraph of the Fourteenth Amendment to the Constitution of the United States, the citizenship of a person born in the United States, as was the testatrix in this case, is dependent upon the place of residence, or domicile; and the question before us ultimately resolves itself into a contention over the point whether the testatrix had ever acquired a legal

domicile in the State of California and whether, supposing such domicile to have been acquired, she may not have lost it as a result of her removal from that state. The proponent of the will, Beatrice Babcock Templeton, mother of the three children who are principal beneficiaries of the will, contends that the testatrix acquired a legal domicile in the State of California by residence therein over two periods of time between 1917 and 1923, and that such domicile was never lost. William Rider Babcock, the brother of the proponent, resists the probate of the will on the ground that the testatrix had never acquired a legal domicile in the State of California, or that, if she had, such domicile had been lost under the conditions presently to be discussed.

It appears that Jennie Rider Babcock had spent her married life in the State of Massachusetts; but, her husband having died in 1908, she removed a year later to Manila where she lived with her son, W. R. Babcock, until in 1917, when she joined the family of her daughter, Mrs. B. B. Templeton, in San Francisco, California. During these years W. R. Babcock and G. D. Templeton, son and son-in-law, respectively, of the testatrix, were running a business in Manila, which had been incorporated under the style of Babcock & Templeton, Inc., with Babcock as president of the company and Templeton as its vice-president. As a branch office had been opened in San Francisco requiring the presence of an officer of the company, Templeton took up his abode in San Francisco for the purpose of managing the business of said branch. The testatrix, it may be noted, had acquired stock in the company and had no other independent source of income than the dividends derived therefrom.

After remaining with the Templetons in San Francisco for several months, the testatrix returned to Manila in July, 1918. During this stay in Manila she occupied an apartment in the house of her son, where she remained until August, 1920. She then returned to San Francisco and lived with the Templetons until May, 1923. From a legal point of view, the character and incidents of this second sojourn in San Francisco constitute the most important fact in the case, since the trial court deduced from her acts and statements the conclusion that she had acquired a domicile in California. Among the features of importance which characterize the incident we note the following: First, her son-in-law, Templeton, owned a home in San Francisco in which he lived, without any apparent intention of removing from the state; secondly, upon arriving in San Francisco, the testatrix established herself as a practitioner in Christian Science, a cult to which she was attached; thirdly, she engaged in political activities, taking part in a parade advertising a cause in which she was interested, and she voted in at least one general election that occurred in that state; fourthly, she formed an attachment for California, and in many conversations thereafter with intimate friends, she referred to California as her home state and expressed her intention of returning there and building a home in which to live. Indeed, it appears in evidence that only a short time before her death in Manila she was acquiring a few pieces of Spanish furniture to take back with her to California.

In the year 1923, Babcock & Templeton, Inc., decided to close its office in San Francisco and to open a branch in New York City. This made it necessary for G. D. Templeton to remove with his family to New York State. He accordingly sold his home in San Francisco and went to live in New York. This step on the part of the Templetons determined the course of the testatrix, who gathered her personal effects together and accompanied them to New York, leaving behind in the care of friends three pieces of furniture to which she was especially attached and which she perhaps thought she might use later in California. Upon arriving in New York State, the Templetons established themselves in White Plains, near New York City. Here the testatrix occupied part of the apartment which the Templetons had taken, but she appears to have supplied the furniture necessary for her own use. Not long thereafter, the testatrix announced herself again in the Christian Science Journal as a practitioner of Christian Science in White Plains.

The sojourn of the testatrix in New York was apparently not congenial, since, after a few months of experience in that city, she returned to Manila, arriving at this place in January, 1924. The impression that conditions in New York made upon her may be gauged by a statement subsequently made by her to one of her friends in Manila,

"Deliver me from living in New York." What really brought her back to the Philippine Islands, apart from her dislike to the environment in New York, is not certain, but she suggested to friends here, after arriving, that a desire to economize the cost of living may have had a part in her course.

A circumstance to which importance is attached by the appellant is that, in the Passenger Manifest of the vessel upon which she came to Manila, she caused New York City to be entered opposite her name in the column indicating "Last Permanent Residence," it being insisted that this is an admission on her part tending to show the acquisition by her of a domicile in New York State. We consider this circumstance of no probative force in connection with the issues of this lawsuit. The Passenger Manifest gave the passenger no choice about indicating whether New York was the place of last residence or the place of last permanent residence, and of course when she told the ship's official that she was from New York City, the name of this place necessarily had to go down in the column mentioned. As little importance is to be attached to her Baggage Declaration and Entry, made on the same voyage before disembarking at Manila, in which she stated that she was a resident of Manila. Papers of this character are not commonly written with legal precision; and the circumstance that she had lived many years in Manila and was coming back to this city, sufficiently explains why she claimed to be a resident of Manila in that declaration without making any conclusive commitment as to the place of her domicile in law.

Of some importance, as throwing light upon the state of her mind towards California and the intention with which she removed from that state, are the numerous conversations, after her return to Manila in 1924, in which she revealed an intention of returning to live in California. It is evident from the proof that the removal of the testatrix from California to New York did not proceed from her volition but resulted from circumstances over which she had no primary control, her motive being found in her desire to be with her daughter and grandchildren. It may also be here stated that the testatrix had kin in New York State whom she had visited more than once during her abode in California; and she appears to have inherited some property from a sister who had been living in New York and who died before the return of the testatrix to the Philippine Islands.

The finding of the trial court to the effect that the deceased had acquired a domicile in the State of California is in our opinion based upon facts which sufficiently support said finding. In particular, we are of the opinion that the trial court committed no error in attaching importance to the circumstance that the deceased had voted in California elections. Though not of course conclusive of acquisition of domicile, voting in a place is an important circumstance and, where the evidence is scanty, may have decisive weight. The exercise of the franchise is one of the highest prerogatives of citizenship, and in no other act of his life does the citizen identify his interests with the state in which he lives more than in the act of voting.

This record supplies no material with which to refute the conclusion of the trial court that a domicile was thus acquired by the testatrix in the State of California; and what we consider the more critical question is whether or not the domicile thus acquired was subsequently lost by removal from said state. But upon this point also, we are of the opinion that the conclusion of the trial court, to the effect that acquired domicile had not been lost, is in conformity with the evidence. It is a recognized rule that the intention with which removal is made from a particular state determines whether or not the domicile is abandoned; and intention is revealed only in the acts and declarations of the person concerned.

In the case before us there are no declarations of the testatrix in evidence which would tend to show that, upon removal to New York, she had any intention of acquiring a legal domicile in that state. On the contrary her short stay there and her repeated statements made thereafter show that she could not possibly have had any intention of making that state a place of permanent abode. As was pointed out by this court in *In Re Estate of Johnson* (39 Phil., 156), a person transferring his domicile from one state of the American Union to another loses his domicile in the state of his earlier abode upon acquiring a domicile, or citizenship, in the state of his new abode. The

acquisition of the new legal domicile extinguishes the old. Certainly in this case it cannot be said with any propriety that the domicile of the testatrix in California was suppressed by the acquisition of a new domicile in New York State.

But it is said that, even supposing that the testatrix had not acquired a domicile in New York, yet she was a resident of the Philippine Islands at the time of her death, and that, having established herself in these Islands as a place of permanent abode, her will should not be admitted to probate as the will of a citizen of another state. But the proof shows that however long the testatrix had resided in the Philippine Islands, she at no time had any intention of residing here permanently. On the contrary, her repeated declarations reveal a fixed intention of returning ultimately to the United States.

Again, it is a rule that a citizen of the United States cannot acquire citizenship in the Philippine Islands by residence here, however long continued (*In Re Estate of Johnson*, 39 Phil., 156). The testatrix therefore remained at the time of her death a citizen of the United States. Her will is therefore provable under section 636 of the Code of Civil Procedure as the will of a citizen of another state or country; and the only question to be determined in this case is, which state of the American Union has the best claim to her citizenship, a question, which, as we have already seen, turns upon domicile; and there is no other state whose citizenship she can claim, according to the evidence in this record, with as good right as the State of California. Massachusetts, the place of her marital abode, has not been entered in the competition, and we must decide between California and New York. As between these two states, California was surely the state of her legal domicile, acquired by choice and by residing therein. Furthermore, this California domicile has not been supplanted by a later domicile acquired in New York. It results that the trial court committed no error in considering the testatrix a citizen of the State of California, for the purposes of admitting this will to probate.

The judgment will therefore be affirmed, and it is so ordered, with costs against the appellant.

Avanceña, C. J., Johnson, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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