

TEOPILO HAW, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G. R. No. 40895. March 05, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal by the Insular Collector of Customs from a decision of the Court of First Instance of Manila in a habeas corpus case.

The petitioner Teofilo Haw, seventeen years of age, arrived from China at the port of Manila on October 19, 1933, and claimed the right to enter and reside in the Philippine Islands as a native born citizen thereof. There is no dispute as to the fact that the petitioner was born in Gumaca, Tayabas, Philippine Islands, on February 13, 1916, of Chinese parentage; that his parents left the Philippine Islands for China in 1927 taking with them the petitioner; since then none of them has returned to this country except the petitioner.

The respondent, as shown by the proceedings held before him (Exhibit A), approved the decision of a board of special inquiry and refused to allow the petitioner to land and ordered that he be returned to China. The decision of the board gives three grounds for denying the petitioner's right of entry: First, that his parents have permanently left the Philippine Islands and established their domicile in China; second, that the duplicate of the identification affidavit No. 3229 made by the petitioner on January 18, 1927, was issued to one Abundio Cue Haw, apparently a brother of the applicant; and third, the applicant is liable to become a public charge.

The petitioner's birth in the Philippine Islands makes him a citizen of the Philippine Islands. (Roa vs. Collector of Customs, 23 Phil., 315; U. S. vs. Ang, 36 Phil., 858; U. S. vs. Lim Bin, 36 Phil., 924.) Being a citizen and a subject of these Islands, it is his right to return thereto and it is his country's obligation to receive him. The objections of the respondent to his re-admission are entirely irrelevant.

On this appeal the respondent assigns as errors the following:

"The lower court erred:

"1. In not ruling that petitioner, who is a minor and under the parental authority of his legally recognized Chinese parents, cannot as yet exercise the right of electing the nationality of his country of birth.

"2. In not ruling that during his minority he follows the nationality of his Chinese parents.

"3. In not ruling that petitioner has been expatriated by his Chinese parents."

The first two assignments assume that the petitioner is not only a citizen of the Philippine Islands but also of the Republic of China, that is, that he possesses a dual nationality. We cannot take judicial notice of the law of China with relation to Chinese nationality and there is nothing in this record which proves that the petitioner is a citizen of China. Therefore, so far as this record goes, there is no question of election of nationality here involved.

The Solicitor-General cites no authorities in support of his argument under the third assignment of error that the

petitioner has been expatriated by his Chinese parents. Expatriation may be accomplished by citizens who are sui juris by express or implied renunciations of their citizenship. Express renunciation usually occurs when a new and different citizenship is assumed. But it may also be implied from a long period of absence and the adoption of a domicile in a foreign country without intention to return to the country of original citizenship. (*Lorenzo vs. McCoy*, 15 Phil., 559.) In the case cited, *Lorenzo*, who was born in the Philippine Islands of a Chinese father, left the Islands when he was about fifteen years old and remained continuously in China until he was thirty-four years of age and acknowledged that he had no intention of returning until the year when he applied for admission here. In other words, he resided continuously in China for thirteen years after he attained his majority and was vested with the right to select his own domicile and citizenship.

In the case of *Munoz vs. Collector of Customs* (20 Phil., 494), it appears that *Munoz* was born in the Philippine Islands of a Chinese father in the year 1880. At eleven years of age (that is, in the year 1891) he was sent to China where he remained until January, 1911 (that is to say, for ten years after he attained his majority). It was held that he had not expatriated himself because "he presented satisfactory proof that he would have returned sooner to the Philippine Islands had it not been for certain financial difficulties, and that he never intended to expatriate himself and had never taken active steps to that end." This court held that under such conditions, "citizenship is not lost where the stay abroad is not prolonged beyond that shown in the case at bar, and when there is, in fact, a bona fide return to the native land with the honest intention to make it his permanent home and country." (*Ibid.*, page 498.)

The petitioner not being a person sui juris and being under a disability of law and of fact, in that he is under the control of his father, cannot renounce his Philippine citizenship. His temporary absence from the Philippines with his parents is not sufficient to warrant an implied renunciation during his minority. Such an implied renunciation will be inferred in any event from his conduct only after he attains his majority. (Cf. *U. S. vs. Go-Siaco*, 12 Phil., 490; *Munoz vs. Collector of Customs*, *supra*. See also *State vs. Jackson*, 79 Vermont, 504; 8 L. R. A. [NS], 1245.) There is no evidence in this record that his father attempted to renounce the petitioner's Philippine citizenship for him.

Being at the time of his application for admission a citizen of the Philippine Islands, the Collector of Customs had no lawful authority to exclude the petitioner. The judgment is affirmed with costs de officio.

Street, Abad Santos, Hull, and Diaz, JJ., concur.

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