

**IN THE MATTER OF THE ESTATE OF JOSE DE AGUILAR Y AULES,
DECEASED. TOMAS OCEJO Y SAMPERIO, PETITIONER AND
APPELLANT, VS. CONSUL GENERAL OF SPAIN, MOVANT AND
APPELLEE.**

G.R. No. 45449. April 22, 1939

Ponente: MORAN, J.

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MORAN, J.:

On October 19, 1936, appellant, Tomas Ocejo y Samperio, claiming to be one of the principal creditors of the deceased Jose de Aguilar y Aules, filed a petition in the Court of First Instance of Manila, seeking to be appointed administrator of the estate of said deceased. The petition alleges that, on petitioner's best information and belief, the deceased died intestate; and that the deceased was single and his heirs, if he had any, were unknown. The petition was granted. Thereafter, the Consul General for Spain moved to vacate the order of appellant's appointment as administrator, alleging that the deceased was a Spanish subject at the time of his death, and prayed that he instead, be appointed special administrator pursuant to the Treaty of Friendship and General Relations entered into between Spain and the United States in 1902. He also prayed that the estate of the deceased, not exceeding P6,000, be summarily distributed in accordance with law. J. Perez Cardenas, claiming likewise to be a creditor of the deceased, intervened and indicated acquiescence in the appointment of the consul general as special administrator. The lower court granted the motion of the consul general and, vacating appellant's appointment, ordered that the estate be summarily settled under section 597 of the Code of Civil Procedure, as amended, and appointed said consul general special administrator. From this order, petitioner appealed.

Three important questions are raised in this appeal.

(1)

Was the deceased a Spanish subject at the Time of his death? It is admitted that the deceased was a Spanish subject before coming to the Philippines. The consul general in his motion stated, under oath, that the deceased was a Spanish subject at the time of his death. Appellant himself, having reported his death to the Spanish Consul General, impliedly recognized his Spanish nationality. These circumstances, taken in conjunction with the fact that the deceased was registered as a Spanish subject in the Spanish Consulate General in the Philippines, more than sufficiently warrant the conclusion that said deceased was a Spaniard when he died.

Appellant, in his objection to the motion of the consul general, stated that the deceased had come to the Philippines fifty years ago, where he had been residing continually until his death, and having failed to make a declaration before a court of record of his desire to preserve his allegiance to the Crown of Spain, he had become a Filipino citizen, under the provisions of the Treaty of Paris of December 10, 1898. These pretensions are not, however, supported by any proof. Appellant's claim that he has not been accorded an opportunity to offer such proof finds no support in the record; wherefore, the regularity of the proceedings must be presumed. Besides, even admitting that the deceased had been residing in the Philippines up to the time of his death, his having inscribed

himself in the Spanish Consulate General as a Spanish subject is a sufficient declaration of his intention to preserve his allegiance to the Crown of Spain. (Yanez de Barnuevo vs. Fuster, 29 Phil., 606.)

(2)

Is the Treaty of Friendship and General Relations of 1902 between Spain and the United States applicable to the Philippines ? Articles 26 and 27 of the Treaty read:

"Articulo XXVI.—En caso de fallecimiento de un subdito o ciudadano de una de las partes en los territorios o dominios de la otra, las Autoridades locales competentes deberan dar aviso del hecho al Consul o Agente Consular de la Nacion a que el difunto pertenecla, a fin de que se pueda informar inmediatamente a las partes interesadas.

"Articulo XXVII—Los Consules generates, Consules, Viceconsules y Agentes consulares de las respectivas Altas Partes contratantes, tendran conforme a las leyes de su pais y a las instrucciones y resrlamentos de su propio Gobierno, en cuanto sean compatibles con las leyes locales, el derecho de representar a los herederos ausentes, desconocidos o menores de edad, parientes inmediatos o representantes legales de los subditos o ciudadanos de su Pais que mueran dentro de su jurisdiccion consular, asi como de aquellos de sus compatriotas que mueran en el mar, cuyos bienes sean llevados a su demarcacion consular, y de comparecer personalmente o por medio de delecado que los represente en todos los procedimientos relativos al arreglo de sus bienes, hasta que los herederos o representantes legales comparezcan por si mismos.

"Hasta que tenga lugar esta comnarecencia podran dichos funcionarios consulares, en cuanto sea compatible con las leyes locales, cumplir todos los deberes prescritos por las leyes de su pais y las instrucciones y reglamentos de su pronio Gobierno para la custodia de la propiedad y arreglo de los bienes de su difunto compatriota.

"En todo caso los efectos y bienes de los subitos o ciudadanos difuntos seran retenidos dentro del Distrito consular durante doce meses naturales por dichos Consules generates, Consules, Viceconsules o Asrentes consulares, o por los representantes leales o herederos del difunto, durante cuyo tiempo los acreedores de aquel, si los hubiere, tendran derecho mra presentar sus reclamaciones y demandas contra dichos efectos y bienes; y todas las cuestiones que se suseitan con motwo de estas reclamaciones o demandas, se decidiran por las autoridades judiciales locales con arreglo a las leyes del pais en que dichos funcionarios estan nombrados."

The word "dominios" appearing in article 26 of the treaty includes the Philippines. Pending withdrawal of the sovereignty of the United States, the Philippines, even in its present self-governing status, continues to be subject to the sovereignty of the United States and is, in this sense, a part of the United States. The rule invoked by the appellant to the effect that the constitution and acts of Congress of the United States do not, ex proprio vigore, have force in the Philippines, does not apply to a treaty which, by the very nature of its provisions, is intended to apply thereto.

(3)

Has the Spanish Consul General a better right than the appellant to be appointed as special administrator? Appellant contends that he comes second, and the consul general third, in the order of preference established in section 642 of the Code of Civil Procedure. The provisions of article 27 of the treaty, which confers upon the consul general the right to represent the unknown and absent relatives of the deceased, must be construed as according him the right to be situated within the first place in said order of preference. At all events, the court was not bound, in the appointment of special administrator, to follow said order of preference. According to the treaty, the consul general has the right to take possession and make settlement of the estate of the deceased in so far as it was compatible with the laws of the Philippines; and to make that right conformable to local laws governing administration of the estate of deceased persons, there was no other means but the appointment of the consul

general as special administrator subject to the orders of the court. Accordingly, the appointment of the consul general was proper. Finally, it appearing that the estate of the deceased does not exceed P6,000, the order for the summary settlement thereof was equally proper.

Judgment is affirmed, with costs against appellant.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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