

TRANQUILINO ROA, PETITIONER AND APPELLANT, VS. INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.*G.R. No. 7011. October 30, 1912*

Ponente: TRENT, J.

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This is an appeal from an order of the Court of First Instance of Cebu recommitting the appellant, Tranquilino Roa, to the custody of the Collector of Customs and declaring the Collector's right to effect appellant's deportation to China as being a subject of the Chinese Empire and without right to enter and reside in the Philippine Islands. There is no dispute as to the facts.

The appellant, Tranquilino Roa, was born in the town of Luculan, Mindanao, Philippine Islands, on July 6, 1889. His father was Basilio Roa Uy Tiong Co, a native of China, and his mother was Basilia Rodriguez, a native of this country. His parents were legally married in the Philippine Islands at the time of his birth. The father of the appellant went to China about the year 1895, and died there about 1900. Subsequent to the death of his father, in May, 1901, the appellant was sent to China by his mother for the sole purpose of studying (and always with the intention of returning) and returned to the Philippine Islands on the steamship Kaifong, arriving at the port of Cebu October 1, 1910, from Amoy, China, and sought admission to the Philippine Islands. At this time the appellant was a few days under 21 years and 3 months of age.

After hearing the evidence the board of special inquiry found that the appellant was a Chinese person and a subject of the Emperor of China and not entitled to land. On appeal to the Insular Collector of Customs this decision was affirmed, and the Court of First Instance of Cebu in these habeas corpus proceedings remanded the appellant to the Collector of Customs.

On appeal the appellant, through his counsel, assigns the following errors:

"1. The lower court erred in holding that the petitioner is not entitled to enter the Philippine Islands upon his claim that he is a native inhabitant who has on attaining his majority exercised his right of election as between the jus sanguinis and jus soli.

2. That the board of special inquiry at Cebu abused its authority and discretion in ignoring the declaration of the appellant of his election to be and of his being a citizen of the Philippine Islands."

The question presented is whether a child born in the Philippine Islands in July, 1889, of parents, one of whom (the father) was a Chinaman and the other a Filipina, who at the time of his birth were permanently domiciled and resided in the Philippine Islands and were not employed in any diplomatic or official capacity under the Emperor of China, becomes, at the time of his birth, a citizen of the Philippine Islands, by virtue of law, and whether he can, on reaching his majority, elect to become a citizen of the country of his birth.

The pertinent part of the decision of the board of special inquiry reads:

"In view of the fact that the applicant for admission was born in lawful wedlock, he takes the nationality of his

father, and as his father was not a subject of the King of Spain on April 11, 1899, the applicant, acquiring the nationality of his father, becomes a subject of the Emperor of China and not a citizen of the Philippine Islands."

Upon appeal the Insular Collector of Customs in his decision dated February 17, 1911, said:

"Under the laws of the Philippine Islands, children, while they remain under parental authority, have the nationality of their parents. Therefore, the legitimate children born in the Philippine Islands of a subject of the Emperor of China are Chinese subjects and the same rule obtained during Spanish sovereignty. Therefore, the provisions of the Treaty of Paris and of the Philippine Bill with reference to Spanish subjects have no application in determining the citizenship or nationality of the children of Chinese subjects in the Philippine Islands. Under the Chinese Exclusion Laws, a person of the Chinese race and descent is not entitled to enter the Philippine Islands except under the terms and conditions expressly provided for. "No abuse of authority or discretion on the part of the members of the board of special inquiry having been claimed or appearing; their decision in this matter is sustained as being correct and proper on the showing made and in accordance with the law. The said Tranquilino Roa is therefore refused landing."

In the Chinese and Immigration Circular No. 288, issued July 19, 1909, the Insular Collector of Customs said :

"In the Wong Kim Ark case (169 U. S., 649), it was held that the Constitution of the United States must be interpreted in the light of the common law. It would seem reasonable therefore that the Acts of Congress should be construed in the same light and it would necessarily follow that the Act of Congress of July 1, 1902, should, as far as possible, have applied to its construction and enforcement the common law doctrine of citizenship by birth, and unless such Act clearly excludes from its terms persons born within the Philippine Islands, such persons should be considered as citizens thereof.

"Attention is also invited to the fourteenth amendment to the Constitution of the United States, and to the Civil Rights Act of 1866, both of which set forth in the most explicit and comprehensive terms the principle of citizenship by birth, and to the fact that the courts have construed both of these to be but a reiteration of the common law doctrine on the subject of citizenship."

Section 1 of the fourteenth amendment to the Constitution, of the United States reads:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. * * *"

The provisions of the Spanish Civil Code on this subject which were in force in the Philippine Islands on April 11, 1899, are as follows:

"Art. 17. The following are Spaniards:

"1. Persons born in Spanish territory. '

"2, Children of a Spanish father or mother, even though they were born out of Spain.

"3. Foreigners who may have obtained naturalization papers.

"4. Those who, without said papers may have acquired a domicile in any town in the Monarchy.

"Art. 18. Children, while they remain under the parental authority, have the nationality of their parents.

"In order that the children born of foreign parents in Spanish territory may enjoy the benefits granted them by paragraph 1 of article 17, it shall be an indispensable requisite that the parents declare, in the manner and before the officials specified in article 19, that they choose, in the name of their children, the Spanish nationality, renouncing any other.

"Art. 19. Children of foreign parentage born in Spanish domains must state, within the year following their majority or emancipation, whether they desire to enjoy the Spanish nationality granted them by article 17.

"Those who are in the kingdom shall make this declaration before the official in charge of the civil registry of the town in which they reside; those who reside abroad, before one of the Consular or Diplomatic Agents of the Spanish Government, * * *" The second paragraph of Article IX of the Treaty of Paris provides: "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

Section 4 of the Philippine Bill provides:

"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."

All admit (1) that it is the inherent right of every independent nation to determine for itself and according to its own constitution and laws what classes of persons shall be entitled to its citizenship; and (2) that if the appellant is a citizen of the Philippine Islands, the Chinese Exclusion Acts do not and cannot apply to him.

The interpretation and construction of the first section of the fourteenth amendment to the Constitution of the United States were involved in the leading case of *United States vs. Wong Kim Ark* (169 U. S., 649.) The facts in the case were: Wong Kim Ark was born in 1873 in the city of San Francisco and was a laborer. His father and mother were persons of Chinese descent, and subjects of the Emperor of China; they were, at the time of his birth, domiciled residents of the United States; and they continued to reside and remain there until 1890, when they departed for China. During all the time of their residence in the United States they were engaged in business and were never employed in any diplomatic or official capacity under the Emperor of China. Wong Kim Ark ever since his birth had but one residence, to wit, in California; and had there resided, claimed to be a citizen of the United States, and had never lost or changed that residence or gained or acquired another; and neither he nor his parents acting for him ever renounced his allegiance to the United States or did or committed any act or thing to exclude him therefrom. In 1890 when he was still a minor he departed for China on a temporary visit and returned in the same year and was permitted by the Collector of Customs to enter the United States upon the ground that he was a native-born citizen of that country. After such return he remained in the United States claiming to be a citizen thereof until 1894, when he again departed for China on a temporary visit and with the intention of returning. He did return in August, 1895, and applied to the Collector of Customs for permission to land and was denied such permission upon the sole ground that he was not a citizen of the United States. It was conceded that if he was a citizen of the United States the Acts of Congress known as the Chinese Exclusion Acts, prohibiting persons of the Chinese race, and especially Chinese laborers, from entering the United States, did not and could not apply to him.

Wong Kim Ark filed a petition in the United States District Court for a writ of habeas corpus, alleging that he was a citizen of the United States entitled to enter that country as such, and that he was illegally detained by the Collector of Customs. The writ was issued, and after hearing the petitioner was directed to be discharged from custody. The respondent appealed to the Supreme Court of the United States. That court, after a very exhaustive examination of the questions presented, affirmed the judgment of the district court, saying:

"The fourteenth amendment (to the Constitution of the United States) affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including

all children here born of resident aliens, with the exception or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes. The amendment, in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled within the United States."

The questions presented in this case were definitely settled the Supreme Court of the United States. According to the doctrine here enunciated, it is quite clear that if the appellant in the case at bar had been born in the United States and was now trying to reenter that country under the same circumstances that he is now trying to reenter this Country, he would be entitled to land upon the ground that he was a citizen of the United States. By the laws of the United States, citizenship depends generally upon the place of birth. This is the doctrine of *jus soli*, and predominates. Consequently, any person born in the United States (with certain specific exceptions) is a citizen of that country, owes it allegiance, and is entitled to its protection.

"The right of expatriation is a natural and inherent right of all people." (Act of Congress, July 27, 1868.) Expatriation is the voluntary renunciation or abandonment of nationality and allegiance. The Act of Congress of 1868 does not aptly define what steps must be taken by a citizen before it can be held that he has become denationalized. In fact, there is no mode of renunciation of citizenship prescribed by law in the United States. Whether expatriation has taken place in any instance in that country must be determined by the facts and circumstances of the particular case. No general rule that will apply to all cases can be laid down. (Once a person becomes an American citizen, either by birth or naturalization, it is assumed that he desires to continue to be a citizen of the United States, and this assumption stands until the contrary is shown by some voluntary act on his part.) But when he voluntarily denationalizes or expatriates himself, he then becomes an alien to the United States, and can regain his lost citizenship only by virtue of the same laws, and the same formalities, and by the same process by which other aliens are enabled to become citizens. The result is that a child born in the United States of Chinese parents—as in the case of *Wong Kim Ark*, *supra*, is a citizen of that country and continues to be such until his parents, during his minority, expatriate him, or he, after becoming of age, by some voluntary overt act or acts, expatriates himself. If this is done by his parents during his minority, it might be (a question we do not decide) that he could, on becoming of age, elect the nationality of his birth (the United States).

A reading of article 17 of the Civil Code, above copied, is sufficient to show that the first paragraph affirms and recognizes the principle of nationality by place of birth, *jus soli*. The second, that of *jus sanguinis*; and the last two that of free election, with the first predominating. Article 18 provides that children, while they remain under parental authority, have the nationality of their parents. A married woman follows the condition and nationality of her husband. (Article 22.) Consequently, according to those provisions, the children, during their minority and while they are under parental authority, have, as a general rule, the nationality of their father. In order that children born of foreign parents in Spanish territory might enjoy the benefits appertaining to Spanish nationality, it was necessary for their parents, if they were minors, to make a formal declaration before the proper authorities to the effect that they choose for their children that nationality and renounce all others. The children, within one year after becoming of age or after emancipation, could elect the nationality of their birth and enjoy the benefits pertaining thereto by making the declaration required in article 19 and in the manner set forth therein. In either instance a positive, overt act was essential. In the absence of any such acts, it was not assumed that the children or their parents for them elected the nationality of the country of their birth. The contrary rule prevails in the United States.

According to the second paragraph of article 22 of the Civil Code, a Spanish woman who married a foreigner could, upon the dissolution of the marriage, recover her Spanish nationality by complying with the requisites

mentioned in article 21. (This latter article provided that a Spaniard who had lost his citizenship by acquiring the nationality of a foreign country could recover it upon returning to the Spanish Kingdom by indicating before the proper officials the domicile which he elected as his residence and by renouncing the protection of the flag of said country. As a general rule under Spanish law there was no question about the nationality of a married woman following that of her husband. There might have been cases of marriage, however, where neither the nationality of the wife nor that of the children would follow that of the husband and father. Such, for instance, would be the case if the laws governing citizenship of the country of the father prohibited the nationalizing of the wife and children. It would there necessarily follow that the wife did not lose her nationality upon marriage, nor would the nationality of the children follow that of the father. But with this class, if there be such, we are not now dealing.

Section 1994 of the Revised Statutes of the United States provides that "any woman who is now or may hereafter be married to a citizen of the United States, and who might hereafter be lawfully nationalized, shall be deemed a citizen." The phrase "shall be deemed a citizen" in said section, or as it was in the Act of 1855, "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 persons on that account any the less a citizen. The word "deemed" is the equivalent of "considered" or "judged," and therefore, whatever an Act 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 Congress declared that an alien woman shall, under certain circumstances, be deemed an American citizen, the effect, when the contingency occurs, is equivalent to her being nationalized directly by an Act of Congress, or in the usual mode thereby prescribed. (*Leonard vs. Grant*, 6 Sawy., 603; 5 Fed., 16.)

The Supreme Court of the United States said in *Kelley vs. Owen*, 7 Wall., 496, that the object of the Act was to allow the citizenship of the wife "to follow that of her husband without the necessity of any application for naturalization on her part."

Under the statute and these decisions, an alien woman who marries a citizen of the United States is "deemed" a citizen. Is the converse of this rule true? Does an American woman become an alien by marriage to a foreigner? There is no, statutory declaration to that effect. This question is one which has not been definitely solved, and the contrariety of opinion upon it shows it to be difficult of solution. The doubt arises as to what effect should be given to modern statutes on naturalization and expatriation. In the case of *Shanks vs. Dupont* (28 U. S., 242), decided in 1830, the Supreme Court of the United States said:

"Neither did the marriage with Shanks produce that effect; because marriage with an alien, whether a friend or an enemy, produces no dissolution of the native allegiance of the wife. It may change her civil rights, but it does not affect her political rights or privileges. The general doctrine is, that no persons can, by any act of their own, without the consent of the government, put off their allegiance and become aliens. If it were otherwise, then a feme alien would by her marriage become, ipso facto, a citizen, and would be dowable of the estate of her husband; which are clearly contrary to law."

In *Pequignot vs. Detroit* (16 Fed., 211) it was decided (in 1883) by the United States Circuit Court that an alien woman who has once become an American citizen by marriage which is subsequently dissolved, may resume her alienage by marriage to a native of her own country. In this case, Judge Brown (later associate justice of the United States Supreme Court) expressed doubt as to the binding force of *Shanks vs. Dupont* (supra), because, as he said, the two reasons given for that decision have ceased to exist, viz.: (1) that the general doctrine is "that no persons can by any act of their own without consent of the government, put off their allegiance and become aliens;" (2) that "if it were otherwise, then a feme alien would by marriage become ipso facto a citizen and would

be dowable of the estate of her husband, which are clearly contrary to law." In view of the Act of July 27, 1868, expressly recognizing the right of expatriation, and the Act of February 10, 1855, declaring that any woman married to an American citizen shall be "deemed" a citizen, Judge Brown continued by saying it seemed to him "that we ought to apply the maxim, *Cessante ratione legis, cessat et ipse lex*, to this case, and are not bound to treat as controlling authority the case of *Shanks vs. Dupont*. We should regard the sections above mentioned as announcing the views of Congress upon this branch of international law, and ought to apply the same rule of decision to a case where a female American citizen marries an alien husband that we should to a case where an alien woman marries an American citizen."

In *Ruckgaber vs. Moore* (104 Fed., 947) the United States Circuit Court for the Eastern District of New York held that the political status of a native born American woman who married a citizen of France and removed with him to that country followed that of her husband. The woman having died in France, the court declared that she must be regarded as having been a non-resident alien at the time of her death. Upon this point the court said:

"By the several statutes of America, France, and Great Britain, the marriage of a citizen of such country with an alien wife confers upon the latter the citizenship of the husband; and this policy of the three great powers, in connection with section 1999 of the Revised Statutes of the United States, which proclaims that expatriation is an inherent right, establishes that the political status of the wife follows that of her husband with the modification that there must be withdrawal from her native country, or equivalent act expressive of her election to renounce her former citizenship as a consequence of her marriage. Some serious objections to this, or even the opposite conclusion, exist, but it has been reached after due consideration of the subject, and pertinent authorities, including *Shanks vs. Dupont* (supra), *Pequignot vs. Detroit* (supra), and *Comitis vs. Parkerson* (56 Fed., 556)."

In *Comitis vs. Parkerson* (supra), decided in 1893, the plaintiff, a native citizen of Louisiana, married a native born subject of Italy who had come to Louisiana and engaged in business without intending to ever return to Italy. He never became naturalized. After the marriage, the woman and her husband, until his death, lived together in Louisiana with no intention on the part of either to depart from the United States. After the husband's death the widow continued to reside in Louisiana. The court held that expatriation must be effected by removal from that country and that in the absence of any Act of Congress authorizing it, there can be no implied renunciation of citizenship by an American woman marrying an alien.

In *Jenns vs. Landes* (85 Fed., 801) it appears that the complainant was born in the State of Washington, lived with her father until the year 1896, when she permanently removed from the State of Washington, and was married to a British subject. That she and her husband resided in Canada and had their domicile in the city of Victoria. The Canadian statute of 1886 declared that "a married woman shall within Canada be deemed to be a subject of the state of which her husband is, for the time being, a subject." The court held that the complainant became an alien as respects the United States, so as to enable her to sue in a federal court.

Secretary Fish, in a letter to the President, dated August 25, 1873, said:

"Chief Justice Marshall (*Murray vs. The Charming Betsy*, 2 Cranch, 119) says that when a citizen by his own act has made himself the subject of a foreign power, his status is completely changed, and the act certainly places him out of the protection of the United States while within the territory of the sovereign to whom he has sworn allegiance. Hence, it would seem that the marriage of a female citizen of the United States with a free subject of a country by whose laws marriage confers citizenship upon the wife of its subject, and her removal, to and residence in the country of her husband's citizenship, would divest her of her native character of an American citizen." (*Van Dyne on Citizenship of the United States*, 134.)

In 1886 Mr. Bayard, in the case of Mrs. Zografo, held that a native-born American woman who marries a Turkish

subject and takes up her residence in Turkey becomes a Turkish subject. Upon the death of her husband, in order to revive her American nationality, she must leave Turkey and take up an American residence. (Idem, 136.)

In February, 1890, in the case of Carl Heisinger, Mr. Blaine, then Secretary of State, said that the Department had several times taken the view that the marriage of an American woman to a foreigner does not completely divest her of her original nationality; that her American citizenship was held for most purposes to be in abeyance during coverture, but to be susceptible to revival on her return to the jurisdiction and allegiance to the United States. (Idem, 137.)

In an instruction to the United States consul at Sagua la Grande, June 7, 1895, Acting Secretary Uhl said:

"The view has been taken by this Department in several cases that the marriage of an American woman to a foreigner does not completely divest her of her American citizenship, but that the same is only suspended during coverture, and reverts upon the death of her husband, if she is residing in the United States, or upon her returning to this country if she is residing abroad." (Idem, 137.)

Secretary Sherman, in an instruction to the United States minister at St. Petersburg, March 15, 1897, said:

"By our statute, an alien wife of an American citizen shares his citizenship. By the usual rules of continental private international law a woman marrying an alien shares his status, certainly during his life, but thereafter, on widowhood, reverts to her original status unless she abandons the country of her origin and returns to that of her late husband." (Idem, 138.)

From the foregoing it appears that the decided weight of authority is to the effect that the marriage of an American woman to an alien confers upon her the nationality of her husband during coverture; but that thereafter on the dissolution of the marriage by death, she reverts ipso facto to her original status unless her conduct or acts show that she elects the nationality of her deceased husband. The rule under the Spanish law was to the effect that the widow must not only return to the kingdom but she must also make a declaration before the proper officials that she renounced the protection of the flag of the country of her deceased husband, and desired to resume Spanish citizenship.

The result is that both the United States and Spain have recognized, affirmed, and adopted the doctrine or principle of citizenship by place of birth, by blood, and by election, with the first predominating. Children born in the United States of foreign parents, are citizens of that country, and it is assumed that they and their parents desire that such citizenship continue; and this assumption stands until the contrary is shown. Under Spanish law, the contrary rule prevails. In both countries, the nationality of the wife follows that of the husband. In the United States, the wife, on the dissolution of the marriage by death, ipso facto, reacquires her original status unless she elects otherwise. In Spain, the widow must regain her Spanish citizenship in the manner prescribed by law. In the United States, the nationality of the children does not, by operation of law, follow that of the parents, while in Spain the converse is true. In both countries, the parents may elect the nationality of their children while they are under parental authority, and after the children are released from such authority they may elect for themselves their nationality. The mode of making the election in both countries is materially different. What changes in these matters have taken place in the Philippine Islands by reason of the acquisition of the territory by the United States? Articles 17 to 27, inclusive, of the Civil Code deal entirely with the subject of Spanish citizenship. When these provisions were enacted, Spain was and is now the sole and exclusive judge as to who shall and who shall not be subjects of her kingdom, including her territories. Consequently, the said articles, being political laws (laws regulating the relations sustained by the inhabitants to the former sovereign), must be held to have been abrogated upon the cession of the Philippine Islands to the United States.

"By well-settled public law, upon the cession of territory by one nation to another, either following a conquest

or otherwise, * * * those laws which are political in their nature and pertain to the prerogatives of the former government immediately cease upon the transfer of sovereignty." (Opinion, Atty. Gen., July 10, 1899.)

While municipal laws of the newly acquired territory not in conflict with the laws of the new sovereign continue in force without the express assent or affirmative act of the conqueror, the political laws do not. (Halleck's Int. Law, chap. 34, par. 14.) However, such political laws of the prior sovereignty as are not in conflict with the constitution or institutions of the new sovereign, may be continued in force if the conqueror shall so declare by affirmative act of the commander-in-chief during the war, or by Congress in time of peace. (Ely's Administrator vs. United States, 171 U. S. 220, 43 L. Ed. 142.) In the case of American and Ocean Ins. Cos. vs. 356 Bales of Cotton (1 Pet. (26 U. S.) 511, 542, 7 L. Ed. 242), Chief Justice Marshall said:

"On such transfer (by cession) of territory, it has never been held that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country, transfers the allegiance of those who remain in it; and the law which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals, remains in force, until altered by the newly-created power of the State."

Again, said articles of the Civil Code were laws which pertained to the prerogatives of the Crown of Spain.

"It cannot be admitted that the King of Spain could, by treaty or otherwise, impart to the United States any of his royal prerogatives; and much less can it be admitted that they (the United States) have capacity to receive or power to exercise them." (Pollard's Lessee vs. Hagan, 3 How. (44 U. S.), 212, 225. 11 L. Ed., 565, 571.)

And again, we now have no governmental machinery by means of which the provisions of the second paragraph of article 18 can be enforced. The only express provisions of law now in force in the Philippine Islands touching citizenship are those contained in the Treaty of Paris, and the Acts of Congress of July 1, 1902, and of March 23, 1912, the latter being a reenactment of section 4 of the former, with the addition of a proviso reading as follows:

"Provided, That the Philippine Legislature is, 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 could become citizens of the United States under the laws of the United States, if residing therein."

An American citizen or Spanish subject means any person who owes permanent allegiance to the United States or Spain. Permanent allegiance is used to distinguish the allegiance of an American citizen or Spanish subject from the allegiance of an alien who, because he is domiciled within the domains of either one of these countries, owes a qualified temporary allegiance to that country. A natural born American citizen or Spanish subject means an American citizen or Spanish subject who has become such at the moment of his birth. Citizenship, says Moore on International Law, strictly speaking, is a term of municipal law and denotes the possession within the particular state of full civil and political rights subject to special disqualifications, such as minority, sex, etc. The conditions on which citizenship are acquired are regulated by municipal law. There is no such thing as international citizenship nor international law (aside from that which might be contained in treaties) by which citizenship may be acquired. It therefore follows that the only law applicable to the questions presented in the case at bar is the Treaty of Paris and the Act of Congress of July 1, 1902.

The relations which the inhabitants of ceded territory shall bear to the acquiring state are generally determined by the treaty of cession. Every treaty of cession to which the United States has been a party, with the exception of the Treaty of Peace of 1898 with Spain, ceding Porto Rico and the Philippine Islands to the United States; contains a stipulation providing that the the inhabitants of the territory ceded may in whole or in part become citizens of

United States either immediately or under certain conditions. In the Treaty of Paris the high contracting parties agreed that the civil rights and political status of the native inhabitants of the Philippine Islands shall be determined by the Congress of the United States. The contracting parties further agreed that all Spanish subjects, natives of the Peninsula, who were residing in the Philippine Islands at the time Spain relinquished her sovereignty over this country may continue to reside here and preserve their allegiance to the Crown of Spain by so declaring within the time and in the manner set forth in article 9. In conformity with the provisions of this Treaty, Congress, by the Act of July 1, 1902, providing for the administration of the affairs of civil government in the Philippine Islands, enacted section 4, above quoted. Here Congress declared that all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the 11th of April, 1899, and then resided in this country, and their children born subsequent thereto, shall be deemed and held to be citizens of this country. According to those provisions it is not necessary for such persons to do anything whatsoever in order that they may acquire full citizenship. The same is true with reference to Spanish subjects who subjects «were born in Spain proper and who had not elected to retain their allegiance to the crown. By section 4 the doctrine or principle of citizenship by place of birth which prevails in the United States was extended to the Philippine Islands, but with limitations. In the United States every person, with certain specific exceptions, born in the United States is a citizen of that country. Under section 4 every person born after the 11th of April, 1889, of parents who were Spanish subjects on that date and who continued to reside in this country are at the moment of their birth ipso facto citizens of the Philippine Islands. From the reading of section 4 and taking into consideration the Act of March 23, 1912, it is clear that Congress realized that there were inhabitants in the Philippine Islands who did not come within the provisions of said section, and also that Congress did not then by express legislation determine the political status of such persons. Therefore, the inquiry is - Did Congress intend to say that all of the inhabitants who were not included in section 4 are to be "deemed and held to be" aliens to the Philippine Islands?

Congress by the Act of April 12, 1900, establishing civil government for Porto Rico provided that:

"All inhabitants continuing to reside therein who. were Spanish subjects on the 11th day of April, 1899, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, 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 .on or before the 11th day of April, 1900, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the 11th day of April, 1899; and they, together with such citizens of the United States as may reside in Porto Rico, shall constitute a body politic under the name of The People of Porto Rico, with governmental powers as hereinafter conferred, and with power to sue and be sued as such."

The treaty provisions and the Act of Congress of April 12, 1900, were construed by the Circuit Court of the United States for the Southern District of New York in October, 1902, in the case of Gonzalez (118 Fed., 941) upon a petition for a writ of habeas corpus. The facts in this case were as follows: The petitioner, an unmarried woman, a native of Porto Rico, 20 years of age, arrived in the bay of New York by steamer from the island of Porto Rico on August 24, 1902. She was detained at the immigrant station, was duly examined by a board of special inquiry, and was excluded from admission into the United States upon the ground that she was liable to become a public charge. The court said that the only question open for discussion on that application was whether or not the petitioner was an alien. After examining the law applicable to the case the court concluded by saying: "This legislation (Act of April 12, 1900) has certainly not operated to effect a naturalization of the petitioner as a citizen of the United States. Being foreign born and not naturalized, she remains an alien, and subject to the provisions of law regulating the admission Of aliens who come to the United States."

The writ was dismissed. Upon appeal the Supreme Court of the United States reversed the decision of the Circuit Court and held that Miss Gonzalez was not an alien to the United States within the meaning of the laws governing

the subject. (192 U. S., 1.)

It will be noted that section 7 of the Act of April 12, 1900, provided that "all inhabitants continuing to reside therein who Were Spanish subjects on the 11th of April, 1899, and then resided in Porto Rico" shall be deemed to be citizens of that country, It was contended by some that all native Porto Ricans who were not actually residing in the Island of Porto Rico on the 11th day of April, 1899, do not come within the provisions of the Act and cannot be "deemed and held to be citizens" of Porto Rico. The State Department, has held otherwise. In the case of Marrero, a native of Porto Rico, who had resided in Chile since 1884, and who proposed in 1901 to return to Porto Rico to perform the duties of citizenship there, it was held by Acting Secretary Hill that the language of section 7 of the Act of April 12, 1900, was construed in its general legal sense, in which continued personal presence is not necessary to constitute continuous residence, and that a native of Porto Rico who makes it his permanent domicile does not therefore lose the benefits of this law because he was temporarily abiding elsewhere when it went into effect. (Acting Secretary Hill to Mr. Lenderink, April 29, 1901). And Attorney-General Knox (24 Opinions Attorney-General, 40) held that native Porto Rican temporarily leaving in France who was not in Porto Rico on April 11, 1899, is under section 7 of Act of April 12, 1900, a citizen of Porto Rico.

The cession of the Philippine Islands definitely transferred the allegiance of the native inhabitants from Spain to the United States (articles 3 and 9 of Treaty of Paris). Filipinos remaining in this country who were not natives of the Peninsula could not, according to the terms of the treaty, elect to retain their allegiance to Spain. By the cession their allegiance became due to the United States and they became entitled to its protection. The nationality of the Islands became American instead of Spanish.

The Philippine Islands prior to April 11, 1899, had been for many months under military occupation by the United States as a conquered country when by the third article of the Treaty of Paris the whole archipelago was ceded to the United States. The President, in the exercise of his war power, proceeded to establish a civil government and for that purpose appointed the Philippine Commission, consisting at first of a president and four members. This Commission acting under instructions the Secretary of War, established the three independent and coordinate departments of the government - executive, legislative and judicial and provided means for the carrying on of a complete civil government. The governor-general and vice-governor-general were appointed and qualified. Positions of secretaries of the various departments were made and filled. Courts were provided for, with power to hear and determine all cases arising in the Philippine Islands. In fact, a complete government was established with all the necessary departments for the protection of the life, liberty and property of all the inhabitants. The government thus established was administered through American and Filipino officials and classified civil service employees, all of whom before entering upon the duties of their office took an oath of allegiance to the United States. Thereupon Congress by the Act of July 1, 1902, approved, ratified and affirmed the acts of the President in establishing the civil government. Provisions were made in this act for the bringing into existence of the Philippine Assembly and for the election of Resident Commissioners who should receive their salary from the United States. Other provisions were made for the disposition of public lands, both agricultural and mineral, and the Act sets forth the bill of rights for this country. The Philippine Islands is and has been since the passage of said Act completely under the control of the Congress of the United States and all the inhabitants owe complete and full allegiance or a qualified temporary allegiance, as the case may be, to the United States.

The appellant was, as we have stated, born in the Philippine Islands in 1889. His father was a domiciled alien and his mother a native of this country. His father died in China about the year 1900 while he was still a minor. His mother sent him to China for the sole purpose of studying and on reaching his majority he returned to the country of his birth and sought admission. From the date of his birth to the time he returned to this country he had never in a legal sense changed his domicile. A minor cannot change his own domicile. As minors have the domicile of

their father he may change their domicile by changing his own, and after his death the mother, while she remains a widow, may likewise by changing her domicile change the domicile of the minor. The domicile of the children in either case follows the domicile of their parent. (*Lamar vs. Miccu*, 112 U. S., 452.) After the death of the father the widowed mother became the natural guardian of the appellant. The mother before she married was a Spanish subject and entitled to all the rights, privileges and immunities pertaining thereto. Upon the death of her husband, which occurred after the Philippine Islands were ceded to the United States, she, under the rule prevailing in the United States, ipso facto reacquired the nationality of the Philippine Islands, being that of her native country. When she reacquired the nationality of the country of her birth the appellant was a minor and neither he nor his mother had ever left this country.

Again, it is insisted that as the appellant was born in the Philippine Islands he under Spanish law became a Spanish subject by reason of the place of his birth, but that the rights and privileges incident thereto could not be exercised during his minority unless the father made the declaration required by law. Taking this view of the case, the Spanish nationality of the appellant was suspended during his minority in the absence of a declaration on the part of his father. If this were not true (a question which we do not decide) the appellant, by reason of the place of his birth, acquired at least an inchoate right to Spanish nationality. He could have within one year after reaching his majority become a Spanish subject, but conditions have so changed (not through any act on the part of the appellant) that he can not now acquire Spanish nationality. Under these circumstances can it be said that Congress in enacting section 4 of the Philippine Bill intended to prohibit the appellant who happened to be temporarily absent from the Philippine Islands from reentering this country? Surely, such could not have been the intention of Congress. To so hold would have the effect of excluding the appellant from his native country, from home and all that home means, from his mother, brothers, and sisters, and compel him to live in practically a strange country and among strange people. If he had actually remained in the Islands, no one would ever have thought of deporting him as being a subject of the Chinese Empire.

And again, "no principle has been more repeatedly announced by the judicial tribunals of the country, and more constantly acted upon, than that the leaning, in questions of citizenship, should always be in favor of the claimant of it." Quoted with approval in the case of *Boyd vs. Thayer* (143 U. S., 135).

Would it be in conflict with the provisions of the Act of July 1, 1902, any other Act of Congress, any provision of the Constitution, any doctrine enunciated by the Supreme Court of the United States or the general policy of the United States, to now declare that the appellant is, by reason of the place of his birth, residence, the death of his father, the present nationality of his widowed mother, and his election, a citizen of the Philippine Islands? Section 4 of the Philippine Bill must be read according to its spirit and intent, for a thing which is within the intention of the makers of a civil statute is as much within the statute as if within the letter; and a thing which is within the letter of the statute is not within the statute unless within the intent of the lawmaker. The intent of the law-makers is the law. The congressional meaning of section 4 is to be ascertained from the Act as a whole. This section cannot be segregated, but every part of the Act must be construed with reference to every other part. It should be construed to conform to the well-settled governmental policy of the United States on the subject of citizenship. It is to be given that construction which best comports with the principles of reason and justice. This section declares that a certain class of inhabitants shall be citizens of the Philippine Islands. It does not declare that other inhabitants shall not be citizens. Neither does it declare that other inhabitants shall be deemed to be aliens to the Philippine Islands, and especially it does not declare that a person situated as is the appellant shall not be nor shall not elect to be a citizen of the country of his birth. The appellant could, as we have said, elect to become citizen of the United States had he been born in that country under the same circumstances which now surround him. All the laws and the rulings of the courts on the subject so declare, and this has been the declared policy of the United States. While it has been decided that the Constitution and acts of Congress do not apply *ex proprio vigore* to this

country, but that they must be expressly extended by Congress, nevertheless, some of the basic principles upon which the government of the United States rests and the greater part of the Bill of Rights, which protects the citizens of that country, have been extended to the Philippine Islands by the instructions of the President to the first Philippine Commission and the Philippine Bill. The Act of July 1, 1902, a part of which is section 4, quoted supra, as before stated, ratified and affirmed the civil government established in the Philippine Islands by the President. It extended the Bill of Rights to the inhabitants of this country. It provided means for the disposition of the public lands and enacted mining laws. In fact, it approved of and extended the powers of a republican form of government modeled after that of the United States. Then to hold, after all of this has been done, that Congress intended by section 4 to declare that the appellant is an alien and not entitled, under the circumstances, to reenter the land of his birth and become a citizen thereof, would be a holding contrary to the manifest intent of that body. That Congress did not so intend is irresistibly inferred from these facts.

Was the appellant a citizen of the Philippine Islands on July 1, 1902? If so, the Act of Congress of that date did not denationalize him. At the time this country was ceded to the United States, Basilio Roa, father of the appellant, was, let us say, a subject of the Emperor of China, and the nationality of the appellant, let us further say, followed absolutely that of his father. Basilio Roa died in China in 1900. Tranquilino was then a minor and living with his mother in this country. His mother, before her marriage, was, as we have said, a Spanish subject. On the death of her husband she ipso facto reacquired the nationality of the country of her birth, as she was then living in that country and had never left it. She was then the natural guardian of Tranquilino. The question now arises, did the nationality of the appellant follow that of his mother, admitting that before the death of his father he was a Chinese subject? If his nationality followed that of his mother, it must have been not by reason of the Spanish law, as there was none in force in this country at the time on the subject, but by means of analogous principles of citizenship in America. Upon the dissolution of a marriage between a female citizen of the United States and a foreigner, she ipso facto reacquires American citizenship, if at that time she is residing in the United States. There is no statutory declaration on the question as to whether or not her minor children would follow that of their widowed mother. If the children were born in the United States, they would be citizens of that country. If they were born in the country of which their father (and their mother during coverture) was a citizen, then they would be citizens of that country until the death of their father. But after his death, they, being minors and their mother being their natural guardian and she reacquiring her American nationality by returning to the United States, their nationality would, as a logical consequence, follow that of their mother, she having changed their domicile and nationality by placing them within the jurisdiction of the United States. But, of course, such minor children, on reaching their majority, could elect, under the principle that expatriation is an inherent right of all people, the nationality of the country of their birth.

The nationality of the appellant having followed that of his mother, he was therefore a citizen of the Philippine Islands on July 1, 1902, and never having expatriated himself, he still remains a citizen of this country.

We therefore conclude that the appellant is a citizen of the Philippine Islands and entitled to land. The judgment appealed from is reversed and the appellant is ordered released from custody, with costs de officio.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.

Johnson, J., concurs in the result.

NOTE. - The inquiry in this case was the status of the law upon the questions therein involved in the absence of statutory enactment. The Act of Congress of March 2, 1907, being in part declaratory of what the law was in the United States, confirms the principles announced in the foregoing decision as applicable to cases arising in this country. (Per Trent, J.)

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