45 Phil. 289

[G.R. No. 20809. October 22, 1923]

GO JULIAN, PETITIONER AND APPELLANT, VS. THE GOVERNMENT OF THE PHILIPPINE ISLANDS, OPPONENT AND APPELLEE.

D E C I S I O N

VILLAMOR, J.:

The petitioner, Go Julian, a Chinese merchant born in the Philippines of Chinese parents, filed a petition in the Court of First Instance of Iloilo on November 17, 1922, for naturalization as a citizen of the Philippine Islands, under Act No. 2927 enacted by the Philippine Legislature on March 26, 1920. To this application the Attorney-General entered an opposition on the ground that: (*a*) The petitioner, being a Chinese subject, was not entitled to the benefits granted by Act No. 2927, for, according to subsection (*c*) of section 1 of said Act, Philippine citizenship can be acquired only by "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 (*b*) under the laws of the United States, the petitioner could not be naturalized as a citizen of the United States even if he were residing therein.

The trial court, sustaining the opposition of the Attorney-General, denied the petition of the petitioner in a judgment dated March 6, 1923. From this judgment the petitioner has appealed, and his counsel in this court assigns error to the finding of the lower court, denying the petition for naturalization of Go Julian.

It appears from the record that the petitioner was born on September 7, 1899, in the municipality of Iloilo, Iloilo, of a Chinese father and mother, named Gotianting and Chansi, respectively. Since then the petitioner has been residing in the municipality of Iloilo, having gone twice to China, the first time to

study for nine years, and the second, to sojourn there for one year. The petitioner is at present married to a Chinese woman and has a child, both living in the municipality of Iloilo. He is not under any of the disqualifications mentioned in section 2 of Act No. 2927. The petitioner admits in his petition that now he is a citizen or subject of the Chinese Republic, and according to Exhibit B, dated October 1, 1903, he holds a certificate of residence issued under the provisions of the Act of Congress of April 29, 1902. It does not appear in the record that his parents, who were of Chinese nationality, were considered as Spanish subjects before the ratification of the Treaty of Paris on August 11, 1899.

Under the facts above stated, which we consider to have been proven in this cause, and assuming that the petitioner, by reason of having been born in the Philippines, had at least a latent right to Philippine citizenship (U. S. *vs*. Lim Bin, 36 Phil., 924, and cases cited); and assuming, moreover, that during his minority his father chose the nationality of his country in applying for a certificate of residence, in 1903, and that the petitioner, upon attaining the age of majority, chose the nationality of his father; the question that presents itself now for our consideration is whether or not the petitioner may recover the Philippine citizenship under Act No. 2927.

The doctrine laid down by the Supreme Court of the United States in the case of United States *vs*. Wong Kim Ark (169 U. S., 649), is entirely decisive of the opposition of the Attorney-General in favor of the petitioner. In the Wong Kim Ark case aforesaid, that court said:

> "The 14th Amendment 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 exceptions 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. * * *”

In the case of Roa *vs*. Collector of Customs (23 Phil., 315), where the doctrine in the Wong Kim Ark case was applied, this court, among other things, said:

> “The questions presented in this case were definitely settled by 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.
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> ” ‘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 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)."

And after examining sections 17 to 27 of the Civil Code, section 4 of the Act of Congress of July 1, 1902, and several decisions, bearing on citizenship, the court reached the following conclusion:

> "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."

In that same case this court held that articles 17 to 27 of the Civil Code, dealing with Spanish citizenship, were repealed by virtue of the cession of the Islands to the United States, as a consequence of the well-known principle of public law that upon the cession of a territory by one nation to another, either by reason of conquest, or otherwise, * * * all political laws pertaining to the prerogatives of the former government, cease immediately upon the transfer of sovereignty. Therefore, the only legal provisions now in force in the Philippines on citizenship are those contained in the Treaty of Paris and in the

Act of Congress of August 29, 1916, section 2 of which is a reenactment of section 4 of the Act of July 1, 1902, as amended by the Act of Congress of March 23, 1912.

Section 2 of the Act of Congress of August 29, 1916 provides:

> "SEC. 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: *Provided,* 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, or who could become citizens of the United States under the laws of the United States if residing therein."

By virtue of the authority granted by said Act, the Philippine Legislature enacted on March 26, 1920, Act No. 2927 known as Naturalization Law. Section 1 of this Act provides:

> "SEC. 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."

Is the petitioner Go Julian a native of the Philippine Islands within the meaning of the word "natives" used in the Act and the Act of Congress of August

29, 1916? We think so. “Chancellor Kent, in his Commentaries, speaking of the general division of the inhabitants of every country, under the comprehensive title of ‘Aliens and Natives,’ says:

> ” ‘Natives are all persons born within the jurisdiction and allegiance of the United States. This is the rule of the common law, without any regard or reference to the political condition or allegiance of their parents, with the exception of the children of ambassadors, who are, in theory, born within the allegiance of the foreign power they represent * * *’ ” (5 Words and Phrases, 4663.)

Therefore, if the petitioner Go Julian is a native of the Philippine Islands, but is not, however, within the provisions of section 2 of the Act of Congress of August 29, 1916, for having chosen the nationality of his father, may he now recover his Philippine citizenship, under section 1 of Act No. 2927 ? Mr. Justice Malcolm in his Philippine Constitutional Law, vol. I, p. 394, speaking of Act No. 2927, among other things, says:

> “The only qualification for a native of the Philippines to be able to acquire Philippine citizenship is that he must not be less than twenty-one years of age.”

Even viewing the question from the standpoint that the petitioner is a Chinese on account of the fact that he chose the nationality of his father after attaining the age of majority, the fact of his having born in the Philippines still stands, and under the doctrine laid down in the Wong Kim Ark case, *supra*, and followed by this court in various decisions, he may now recover his Philippine citizenship under the provisions of the Naturalization Act.

For all of the foregoing the judgment appealed from must be reversed, the petition of the appellant, Go Julian, granted, and certificate of naturalization issued by the lower court, as provided by law, without special finding as to costs. So ordered.

Johnson, Street, Malcolm, Avanceña, Johns, and *Romualdez, JJ.,* concur.

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