

[G.R. No. 666. January 14, 1902]

IN THE MATTER OF THE PETITION OF J. GARCIA BOSQUE FOR ADMISSION TO THE PRACTICE OF LAW IN THE PHILIPPINE ISLANDS.

D E C I S I O N

ARELLANO, C.J.:

The cession of the Philippine Archipelago having been agreed upon by the parties to the treaty of Paris of December 10, 1898, the compulsory subjection of the subjects of the ceding power to the new sovereign followed as a logical consequence. The status, of these subjects was not uniform, as in addition to the natives there were others who were merely residents but who, equally with the natives, had interests and rights inherent in the nationality of the territory. With respect to these the special agreement contained in article 9 was established, by virtue of which it was agreed to accord them the right of electing to leave the country, thus freeing themselves of subjection to the new sovereign, or to continue to reside in the territory, in which case the expiration of the term of eighteen months without their making an express declaration of intention to retain their Spanish nationality resulted in the loss of the latter, such persons thereby becoming subjects of the new sovereign in the same manner as the natives of these Islands. The period of eighteen months began to run from the date of the exchange of the ratifications of the treaty—that is to say, from April 11, 1899, and expired on the corresponding day of October, 1900. The petitioner absented himself from these Islands on May 30, 1899, and remained absent therefrom during the whole period. It was in January, 1901, that he returned to these Islands.

From this conduct on the part of the petitioner it is evident that he elected to take the first of the two courses open to him under his right of option. Neither the Government nor the courts can place any other construction upon the facts above related. Having left the Islands he had no occasion, to make any declaration of his intention to preserve his Spanish nationality, which he carried with him on his departure. This nationality could be forfeited

only by a continued residence in the ceded territory and a failure to make a declaration of intention to preserve it within the term fixed therefor. The conditions which gave rise to the presumptive change of nationality were residence and the lapse of eighteen months without express declaration to the contrary; these two conditions not being fulfilled there was no change of national status. Neither by the Government of Spain nor by that of the United States could the petitioner be regarded as a Filipino subject. By absenting himself from the territory he continued to be a Spaniard.

To native-born subjects of the territory no such right of option was accorded; it was expressly refused them upon the rejection by the American Commissioners of the proposition in favor of the inhabitants of the ceded territories made by the Spanish Commissioners in Annex No. 1 to the twenty-second protocol. (Conference of December 10, 1898.) The native subject could not evade the power of the new sovereign by withdrawing from the Islands, nor while continuing to reside therein make declaration of his intention to preserve the Spanish nationality enjoyed under the former sovereign. Neither the Government of the United States nor that of Spain can consider them as other than Filipino subjects. This is expressly stated by the Spanish Government in article 1 of its royal decree of May 11, 1901.

The dates fixed by the treaty by which the sovereignty of one nation is ceded to another are of the highest importance, they being part of the contract, and are not within the control of the subjects as are those relating to their individual rights by reason of the fact that the political rights of the contracting nations themselves are the subject of the agreement. It is for this reason that the Government of Spain in the royal decree above cited has always taken the dates fixed in the treaty of Paris as the starting point, and, moreover, expressly declares therein that persons who are natives or residents of the ceded or relinquished territories can not, in their relations with the Government or authorities of such territories, lay claim to Spanish nationality preserved or recovered by virtue of said decree, except with the consent of such Government, or under treaty stipulations. (Art. 5.) The Government and courts of these Islands should not act with less circumspection in the matter, and invade the sovereign rights of Spain by giving the presumptive nationality established by Article IX of the treaty of Paris an extent not warranted by the conditions upon which it depends, to wit, residence coupled with failure to make an express declaration to the contrary. The ordinary provisions of local laws in their normal operation with regard to the effect of absence upon the retention of a residence or domicile can not therefore be relied upon, nor the presumption as to the intention of an absentee recognized by civil codes and international treaties, although the most general and almost the only proof allowed by statute as evidence

of an intention to preserve a residence or domicile in a country is the maintenance of a dwelling or commercial establishment therein, upon which point, as also upon the fact that the petitioner became a member of the bar of Barcelona upon his arrival in that city, we make no decision, not regarding it as of any moment in view of the conclusions above expressed. The fact is that one is not to be regarded as having submitted to the new sovereign by the mere failure to make an express declaration, inasmuch as without a residence *de facto* the declaration is of no significance, having been established for the express purpose of overcoming the effect of a continued residence, an act which in itself implies subjection to the new sovereign by giving rise to the presumption of waiver of Spanish nationality and the adoption of that of the territory.

The petitioner can not, therefore, be considered to have lost his Spanish nationality by reason of his residence in the territory after the 11th of October, 1900, and his failure to make declaration of his intention to preserve it within the period agreed upon by the high contracting parties to the treaty of Paris, and to have adopted the nationality of the native subjects under the presumption arising from the conditions expressed. He can only acquire it through voluntary renunciation of his present nationality by seeking to become naturalized in these Islands; but upon this matter this court can decide nothing, there having been no legislation upon the subject up to the present

The status of the petitioner with respect to the new sovereignty of the territory having been defined, it remains to determine the question raised as to whether Spanish subjects resident therein constitute an intermediate class between other foreign residents and the natives of the country in whose behalf some specially favorable conditions have been stipulated. Upon this point no proposition was made, even incidentally, nor was any reference made to it in the discussions which preceded the treaty of Paris. The American Commissioners, referring to Spanish subjects, natives of Spain, simply said: "Such persons have the fullest right to dispose of their property and remove from the territory or remain therein to continue to be Spanish subjects or elect the nationality of the new territory." (Memorandum annexed to Protocol No. 22.) "They shall also have the right to carry on their industry, commerce, and profession, being subject in respect thereof to such laws as are applicable to other foreigners." (Art. 9 of the treaty of Paris.) The laws applicable to other foreigners were, prior to that treaty, the Law of Foreigners for the Ultramarine Provinces of July 4, 1870, and article 27 of the Civil Code. The first of these laws in its thirty-ninth article authorized all foreigners to engage in any kind of industry in the Spanish ultramarine provinces subject to the laws prevailing therein, and to practice any profession for which the laws did not require a diploma of proficiency granted by the Spanish authorities. No one can doubt that

the legal profession is one of those for the practice of which the law required a diploma of proficiency granted by the Spanish authorities. The second law cited provides that foreigners in Spain shall enjoy the rights which the civil laws accord to Spaniards, subject to the provisions of article 2 of the constitution of the State. Article 2 of the constitution of 1876 establishes the same restriction or limitation as the law of foreigners. Hence if other foreigners could not then engage in the practice of law, and by the express prohibition of the Code of Civil Procedure in force can not do so at the present time, neither can Spanish subjects do so, they being in every respect upon the same footing as other foreigners.

If, then, the petitioner upon his departure from these Islands on May 30, 1899, did not take with him the nationality of the native inhabitants impressed by the treaty of Paris, which had been in force from the 11th of April of the same year; if he departed as a Spaniard and continued to be a Spaniard, by taking the first course left open by the right of option stipulated in the treaty of Paris, without being affected by the presumptive nationality of the territory arising from the fact of residence and the lapse of the time fixed; if he had not elected to adopt this nationality of the territory by express declaration within the same period; if after the expiration of that period it is expressly provided that the right of option shall no longer be available, and that the only course is naturalization, as to which there has been no legislative enactment; if as a Spanish subject upon equal footing with other foreign residents he can not practice the legal profession under the law either prior or subsequent to the treaty of Paris, it is evident that this court can not regard the petitioner as possessed of the qualifications alleged.

The new petition presented by him for admission to the bar of these Islands must therefore be denied, and it is so ordered.

Torres, Cooper, Willard, and Mapa, JJ., concur.

Ladd, J., did not sit in this case.