Citizenship and Naturalization

It is the purpose of this note to consider the present trend in cases involving citizenship and naturalization as laid down by our Supreme Court in recent cases.[1] Time and again, there has been a great deal of litigation in our courts over the question as to whether or not the doctrine of *jus soli* obtains in the Philippines.

At the outset, a logical inquiry would be how the rule of citizenship by birth found a place in our jurisprudence. The United States Congress had not extended the 14th Amendment to the Philippine Islands, but instead recognized the rule of *jus sanguinis* in the Acts of July 1, 1902, March 23, 1912, and in the Jones Law of 1916 which expressly limited the grant of Philippine citizenship to Spanish subjects residing in the Philippine Islands on April 11, 1899 and their descendants born subsequently thereto. But, in Roa v. Collector of Customs,[2] our Supreme Court went beyond the terms of the Acts of Congress and applied the principle of *jus soli* as laid down by the American Supreme Court in U.S. v. Wong Kim Ark,[3] which was wholly based upon the 14th Amendment to the United States Constitution.[4] "In a conflict of interests where God alone knows what's right and where God does not tell, or tells too many men differently, it becomes more important to settle the issue than it is to settle it 'right'. The actual settlement, if accepted in good faith, becomes for that situation the only 'right' which men can realize." [5] And so it was with the doctrine of *jus soli*, laid down firmly in the Roa case; which since then, the Court has followed consistently in subsequent cases.[6]

Because of the prevailing nationalistic sentiment in the Constitutional Convention, our Constitution failed to adopt the rule of

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[1] *Kookooritchkin v. Solicitor General*, G.R. No. L-1812, prom. Aug. 27, 1948; *Palanca v. Republic of the Philippines*, G.R. No. L-301, prom. April 7, 1948; *Villahermosa v. Com. of Immigration*, G.R. L-1663, prom. March 31, 1948; *Tan Chong Hung v. Secretary of Labor*, G.R. No. 47616, prom. Sept. 16, 1947; and *Lam Swee Sang v. Commonwealth of the Philippines*, G.R. No. 47623, prom. Sept. 16, 1947.

[2] 23 Phil. 315.

[3] 169 U.S. 649, 18 S. Ct. Rep. 456.

[4] See Vicente G. Sinco, *Political Law*, Rev. Ed. (1947), Community Publishers, Manila, p. 401.

[5] T. V. Smith, "Justice Holmes: Voice of Democratic Evolution" in Charner Perry's *The Philosophy of American Democracy*, (1943), Univ. of Chicago Press, Ill., p. 132.

[6] *Vaño v. Coll. of Customs* (1912), 23 Phil. 480; *U.S. v. Ong Tianse* (1915), 29 Phil. 332; *U.S. v. Ang* (1917) 36 Phil. 858; *U.S. v. Lim Bin* (1917) 36 Phil. 294; *Go Julian v. Gov't* (1923), 45 Phil. 289; *Santos Co v. Gov't.* (1928), 52 Phil. 543; *Ortua v. Singson Encarnacion* (1934), 59 Phil. 440; *Haw v. Coll. of*

jus soli.[7] Many intellectuals entertained serious doubts about the correctness of the Roa doctrine. Consequently, when the case of Chua v. Secretary of Labor[8] came up before the Court, it decided unanimously that a Chinese who was born in 1914 in the Philippine Islands could not claim Filipino citizenship on the ground of *jus soli*.

However, when the case of Torres v. Tan Chim[9] came up in 1940, the Court refused to repudiate the doctrine of *jus soli*, as it did in the Chua case. The Court compared this case with the Roa case and found that the similarities were very close and the dissimilarities more favorable to Tan Chim. Consequently, the Court decided that the Tan Chim case fell squarely under the Roa doctrine. But it was not easy for the majority, speaking through Justice Laurel, to explain its position; especially as it had to consider the unanimous decision handed down in the Chua case not long ago. Justice Laurel said:

> "It is urged upon us by the Solicitor-General that we reexamine and reverse the doctrine laid down in Roa v. Collector of Customs, **supra**, because the law, we are now informed, had been misconstrued and misapplied by this Court in that case. A suggestion of this kind should be sympathetically received but for the fact that the principle of territoriality **or jus soli** adopted in Roa v. Collector of Customs, **supra**, does not have to be set aside by this Court for the reason that that principle is no longer predominating in this jurisdiction after the taking effect of the Constitution of the Philippines, which has mainly adopted the contrary principle of **jus sanguinis**. If, however, what is suggested is that the case at bar should be decided on an entirely different principle because of the embodiment of a new policy on citizenship in the Constitution we are of the opinion that this cannot be done unless we give a retroactive effect to the Constitution."

Customs (1934), 59 Phil. 612; *Torres v. Tan Chim* (1940), 40 O. G. (6th S) 215; and *Gallofin v. Ordoñez* (1940), 40 O. G. (8th S) 122. *See also* the previous cases of *U.S. v. Go Siaco* (1909), 12 Phil. 490 and *Muñoz v. Coll. of Customs* (1911), 20 Phil. 494.

[7] See Article IV, Sec. 1, Constitution of the Philippines.

[8] 40 O.G. (2nd S) 244. The Court through Justice Imperial declared: "Chua Uang is of Chinese parentage and has the same nationality as her parents on the ground that she was then a minor, there is no doubt that when she went to China at the age of 13 years, which must have been in 1927, she continued to be a Chinese citizen. (Art. 2, Chap. II, of the Rev. Nationality Laws of China, edited by Flournoy-Hudson and published by Carnegie Endowment of International Peace, cited on p. 9 of the brief of the Solicitor-General). When four years later she married Yao Tian, another citizen of the Chinese Republic, she, granting that she had a different nationality, followed that of her husband, in accordance with par. 1 of said Compilation of the Laws of China. Chua Uang cannot invoke Filipino nationality merely because of the fact that she was born in this country, inasmuch as she does not come within the provisions of sec. 2 of the Jones Law, Act of Congress of the U.S. on August 29, 1916, not having been a Spanish subject on April 11, 1899."

[9] 40 O.G. (6th S) 215.

And, as if to buttress further his position on the issue, he continued:

> "We cannot reverse the doctrine in Roa v. Collector of Customs **supra,** if to convert Roa to an alien, after our final pronouncement in 1912 that he was a Filipino. If we depart from the rule there established notwithstanding the almost exact analogy between the two cases, nothing short of legal anachronism would follow, and we should avoid this result. . . When in Roa v. Collector of Customs we declared the applicant therein to be a citizen of the Philippines, that declaration was a statement of a general principle, applicable not only to Tranquilino Roa individually but all those who were in the same situation, that is to say, to all persons born in the Philippines before the ratification of the treaty peace between the U. S. and Spain, of Chinese father and Filipino mother; residents of the Philippines at the time mentioned in the treaty of peace, although in their minority; thereafter, going to China for the purpose of studying, and returning to the Philippines to live here."

What may have led the Court to conclude that the Chua case did not apply to Tan Chim, aside from the fact that both her parents were Chinese, was the fact that she was born during the American regime. But Justice Moran in a vigorous dissent.[10] explained fully why the stand taken by the majority was not tenable:

> "The Roa doctrine applies the principle of **jus soli** embodied in the 14th Amendment to the United States Constitution, and such principle, by its very nature, was never limited in its application to aliens born in the Philippines before the advent of the American sovereignty. For instance, in Haw v. Collector of Customs, 59 Phil. 612, to which said principle was applied. . . It is, therefore, obvious that the principle underlying the Roa ruling, as originally announced by this Court and construed in subsequent cases, applies not only to aliens born in the Philippines prior to the ratification of the treaty of peace, but also to those born thereafter. The place, not the time, of birth was the decisive consideration in the determination of citizenship thereunder. The restatement, therefore, of the Roa doctrine by the majority; confining its application to aliens born before the ratification of the treaty of peace, and excluding therefore those born thereafter, is a new principle which finds absolutely no support either in law or in reason.
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> "With due respect to my brethren in the majority, I would say that when this Court continues to uphold a ruling known to be erroneous, with no plausible excuse therefor but public acquiescence therein, it may soon find itself compelled to make more mistakes in an effort to justify the previous ones. We may thus be building one error upon another until, by their accumulation, we shall come to a point when going further would be perilous and turning backward impossible."

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[10] This dissent is significant not only because it weakened the force of the majority opinion, but also on account of the fact that it became the basis of the Court's opinion in subsequent cases. One author has described this particular

In 1941, two cases—Tan Chong Hung v. Secretary of Labor [11] and Lam Swee Sang v. Commonwealth of the Philippines [12]—came up before the Supreme Court, the first involving citizenship and the other, a petition for naturalization. It appears that in the first case the petitioner was born in the Philippine Islands in 1915 of a Chinese father and a Filipino mother; and in the second, Lam was born in the Philippine Islands in 1900, also of a Chinese father and a Filipino mother. The Court through Justice Laurel, concurred in by Chief Justice Avanceña, Justices Abad Santos and Diaz, held that both were Filipino citizens by virtue of the doctrine of *jus soli* announced in the Roa case. Justices Moran and Horilleno dissented on the grounds expressed by the former in the Tan Chim case.[13].

In October, 1941, the Solicitor General filed a motion for reconsideration in both cases, contending that the persons concerned therein were not Filipino citizens under the laws in force at the time of their birth and prayed that both decisions be set aside.

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kind of dissent thus: "Dissents serve a larger purpose than to cover scruples of conscience or to save your judicial reputation as a good lawyer. Dissents are competing opinions in their own right. They are what the dissenter would have said if he had persuaded enough of his colleagues to agree with him. We have had, we still have, we should always have powerful dissents, from four to five, three to six. They are two pools of mind. x x x. The majority excercise all the powers of the Court, but the minority have a curious concurrent jurisdiction over the future. For a dissent is a formal appeal for a rehearing by the Court sometime in the future, if not on the next occasion. x x x. There are some who feel uneasy, and some who even resent the present Court's practice of many, almost an individuality of opinions. They long for a single authoritative opinion, and they regard any dissent as smelling of heresy or disloyalty. They must not let their feelings run too far ahead of them. By pressing toward the perfection of unanimity they are undermining the very basis of judicial process." Charles P. Curtis, Jr. *Lions Under the Throne*, (1947), Houghton Miflin Co., Boston, pp. 74-76:

[11] 40 O.G. 3816.

[12] 40 O.G. 3817.

[13] A further elucidation of Justice Moran's dissent in the *Tan Chim* case follows: "The majority says nothing in support of the correctness of the Roa ruling, and seeks simply to justify its continued observance upon the fact that it 'had been adhered to and accepted for more than 20 years before the adoption of the Constitution;' and that 'not only this Court but also inferior courts had consistently and invariably followed it; the executive and administrative agencies of the Government had therefore abided by it; and the general public had acquiesced in it.' I do not yield to this judicial policy. If we have induced the Government and the public to follow and accept an error for sometime, it does not seem to be a good policy to continue inducing them to follow and accept the same error once discovered. The rule of *stare decisis* does not apply to the extent of perpetrating an error (15 C. J., p. 918). It is the duty of every court to examine its own decision without reluctance (Baker v. Lorillard, 4 N. Y., 257). As was well said in a case, "I hold it to be the duty of this court freely to examine its own decisions and, when satisfied that it has fallen into a mistake to correct the error by overruling its own decision. An acknowledged error must be more venerable and more inveterate than it can be made by any series of concessions or extra-judicial resolutions, or even by any single decision before it can claim impunity upon the principle of *stare decisis*." (Leavitt v. Blatchaford, 17 N. Y., 521, 523.) "Precedents are to be regarded as the great storehouse of experience; not always to be followed, but to be looked to as beacon

On account of World War II, the motion for reconsideration was not taken up. In 1946, both cases were reconstituted and on September 16, 1947 the Supreme Court (which had by this time changed entirely its composition, except for Chief Justice Moran) reversed the ruling it had laid down in 1941 without a dissenting opinion.[14] The Court was very emphatic in its assertion that "The principle of *stare decisis* [15] does not mean blind adherence to precedents. The doctrine or rule laid down, which has been followed for years, no matter how sound it may be, if found to be contrary to law, must be abandoned. The principle of *stare decisis* does not and should not apply when there is conflict between the precedent and the law. The duty of this court is to forsake and abandon any doctrine or rule found to be in violation of the law in force.[16]

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lights in the progress of judicial investigation." (Per Bartley, C. J., in Leavitt v. Morrow, 6 Ohio St., 71, 78.) Their "authority must often yield to the force of reason, and to the paramount demands of justice as well as to the decencies of civilized society, and the law ought to speak with a voice responsive to these demands." (Norton v. Randolph, 176 Ala., 381, 383, 58 S. 283.)

[14] Justice Tuason did not take part in this case. The Court, however, declared that "this decision is not intended or designed to deprive, as it cannot divest, of their Filipino citizenship those who had been declared to be Filipino citizens, or upon whom such citizenship had been conferred, by the courts because of the doctrine or principle of *res adjudicata.*

Cf. Dissenting opinion of Justice Moran in the *Tan Chim* case which holds: "The doctrine of *stare decisis* is not the equivalent of *res adjudicata* (15 C. J. p. 919; Walpole v. Cholmondely, 7 T. R., 138, 148, 101 Repr. 987). The first relates to legal principles, the latter, to specific facts. Accordingly, such persons who, like Roa, have secured judicial declaration of their status, are protected by the rule of *res adjudicata;* and those who, similarly situated, have not obtained such judicial declaration, but have acquired tangible rights in the exercise of their bona-fide citizenship, may, if such rights are still existing, be saved from the effects of the reversal. If we agree that the Roa ruling is erroneous, the most logical course to follow is to reverse it but saving as a matter of equity, the vested rights above mentioned.

"It is regrettable to note that, while the majority decision upholds the Roa doctrine, it, at the same time, tears into pieces the principle upon which the ruling is founded, leaving thus such ruling without foundation whatsoever either in law or in logic."

See also "The task of doing practical justice does not depend on solving a riddle as to whether an overruling decision serves to correct wrong law or simply to correct a wrong judge. As Solicitor General, I urged that 'this Court has, and should have, as an incident of its power to overrule prior decisions, the power in particular cases to prevent an overruling decision from being an instrument of injustice or hardship.' But, there must be definite limitations in applying such a rule x x x." Robert H. Jackson, *The Struggle for Judicial Supremacy,* (1941), Alfred A. Knopf, N. Y., p. 308.

[15] *Cf.* U.S. Supreme Court's attitude to overruling prior decisions deemed controlling in Samuel J. Konefsky, *Chief Justice Stone and the Supreme Court,* (1945), The Macmillian Co., N.Y., pp. 21-24.

[16] *Cf.* Justice Laurel's Opinion for the majority in the *Tan Chim* case: "While we profess 'no idolatrous reverence for precedents', (Phil. Trust Co. v. Mitchell, 59 Phil. 30), we should not overlook the fact that the rule laid down in the Roa case had been adhered to and accepted for more than 20 years before the adoption of our Constitution; not only by this Court but also inferior courts had consistently and invariably followed it; the executive and administrative agencies of the Government had theretofore abided by it; and the general public

The ruling handed down in 1947 in the Tan Chong case was recently reaffirmed in Villahermosa v. Commissioner of Immigration, *supra*,[17] where the Court declared that: "We have heretofore held [18] that, after the Constitution, mere birth [19] in the Philippines of a Chinese father and a Filipino mother does not *ipso facto* confer Philippine citizenship and that *jus sanguinis* instead of *jus soli* is the predominating factor on questions of citizenship, thereby rendering obsolete the decision in Roa v. Collector of Customs x x x and similar cases" [20] and therefore denied Filipino citizenship to

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had acquiesced in it. Withal, our decisions should not be, as to a given period of time, upon the same or similar facts and under the same and similar circumstances, as fluctuating to engender the phenomenon described by Mr. Justice Thompson, of the Supreme Court of Virginia as *ignis fatuus*."

Justice Villa-Real concurred separately in *Tan Chim's* case: "Creemos con el sabio jurista americano Cardozo que '*Stare decisis* is at least the every day working rule of law,' y que 'when a rule after it has been duly tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal and full abandonment.' (Cardozo, The Nature of the Judicial Process.) En el presente caso no hay nada que sea incompatible con la justicia ni con el bienestar social."

[17] Justice Bengzon, who delivered the opinion of the Court, held that a minor of a deceased Chinese father and a Filipino mother is still a Chinese citizen and that a subsequent reacquisition by the mother of her Filipino citizenship does not make her son a Filipino citizen because "Commonwealth Act No. 63 does not provide that upon repatriation of a Filipina her children acquire Philippine citizenship." In the opinion of the majority, until the minor had reached majority and had exercised his right of election to Filipino citizenship, he still remains a Chinese subject to deportation.

[18] In Tan Chong Hung v. Secretary of Labor, *supra*, (1947).

[19] Justice Padilla, who spoke for the Court in the Tan Chong case (1947), held that the common law principle or rule of *jus soli* had never been extended to this jurisdiction. He further minimized the importance of mere birth as a basis for determining citizenship: "While birth is an important element of citizenship, it alone does not make a person a citizen of the country of his birth. Youth spent in the country; intimate and endearing association with the citizens among whom he lives; knowledge and pride of the country's past; belief in the greatness and necessity of its institutions, in the loftiness of its ideals, and in the ability of the country's government to protect him, his children, and his earthly possessions against perils from within and from without; and his readiness to defend the country against such perils, are some of the important elements that would make a person living in a country its citizen."

[20] What may have strongly influenced the Court in deciding against petitioner was the fact of her son's having violated our immigration laws by taking part in the smuggling of Chinese into this country. Justice Perfecto dissented on the ground that minors "have to live under the same roof with their parents and as near enough to enjoy parental care and protection. Minor children have to follow their parents wherever the latter, by political, moral, mental and economic exigencies, have to establish their abode." If the son committed a crime, "let him be prosecuted and sentenced through due process of law" rather than deny him his citizenship. Justice Tuason also dissented and held that the withholding of "Philippine citizenship from the child of a Filipino mother and an alien father until the child reaches the age of majority" x x x "extends to those cases in which both parents are alive and retain their foreign nationality, or where the father having died, the mother has not chosen to regain her original citizenship." He pointed out that if the majority opinion is followed, an illegitimate child of a Filipino mother by a deceased foreign father would be in a better position than one who is legitimate, as was the case here. If "the theory is that the immigrant must first be purged of his son by deportation after which he may be allowed to come back and settle here, the Court would be

petitioner's son.[21]

In the rather unusual case of Palanca v. Republic of the Philippines, *supra*, our Supreme Court held that "a Filipino citizen need not apply for such citizenship by naturalization or have a certificate of naturalization to be a citizen of the Philippine Islands of which

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adopting an empty ceremony that would lead to no useful purpose, nor enhance the prestige of the administration of law."

[21] *Cf.* Opinion of the Sec. of Justice rendered on July 2, 1948 as to citizenship of a son of a deceased alien father:

"The deceased veteran, Frank Bender, was the son of an American father, Francis Bender, and a Filipino mother, Mercedes Lopez. The spouses were legally married on February 4, 1914. Frank grew up with his mother until the outbreak of the last war, when he joined the guerrillas of North Luzon, fighting with them until he was captured and executed by the Japanese on January 16, 1495..

"QUERY No. 1. Did the mother follow the citizenship of the father on their marriage?

"The law in force at the date of the marriage of the parents of Frank Bender was the Revised Statutes of 1874, section 1994 of which provides:

" 'Any woman who is now or may hereafter be married to any citizen of the United States and who might herself be lawfully naturalized, shall be deemed a citizen.' Section 2169 of the U. S. Revised Statutes limited the privilege of naturalization to 'aliens being free white persons, and to aliens of African nativity, and to persons of African descent.' The Filipino mother not being a 'white person' (Re Alberto, 198 Fed. 688; Re Lampitoe, 232 Fed. 382; Re Rallos, 241 Fed. 686), nor a person of African nativity or descent, it follows that she was ineligible to naturalization as a United States citizen, and that she could not be deemed a citizen of the United States pursuant to section 1994 of the Revised Statutes of the United States of 1874 above quoted. She did not therefore follow the citizenship of her husband on their marriage.

"QUERY No. 2. Was the orphaned minor, Frank Bender, an American citizen even after his father's death and up to the time of his own death?

"After the death of his father, Frank Bender being a minor, followed the citizenship of his mother, with a right to elect his citizenship upon reaching the age of majority. (Roa v. Collector of Customs, 23 Phil. 315) Frank Bender, therefore, followed the citizenship of his mother, after his father's death and during his minority with the right to make an election, which was rendered impossible by his death before reaching the age of majority.

"QUERY No. 3. Is the mother entitled to the benefits of Republic Act. No. 65?

"It being an admitted fact that Frank Bender is a veteran, a guerrilla who actively participated in the resistance movement, it is unquestionable that his Filipino mother is entitled to the benefits provided in section 10 of Republic Act No. 65."

See also the following Opinion of the Sec. of Justice, dated June 29, 1948: "Deceased Francisco Yap was born in China of Chinese parents, came to the Philippines, and during the enemy occupation joined a recognized guerrilla unit and died fighting for the common cause. He was married to a Filipino woman, Paulita Tacsan, with whom he left a minor son. No naturalization papers of the deceased could be produced by the widow." Held: The deceased not being a Filipino citizen, his widow and minor son are not entitled to the pension benefits of Republic Act No. 65. Said the Sec. of Justice: "I have not lost sight of the fact that the widow and the minor child in the case under consideration might be Filipinos, and that by giving them the pension it would be benefiting citizens and not aliens. However, in view of the words of section 10 limiting the right to pension "to widows and children of officers and enlisted men in good standing to the Philippine Army, and of recognized or deserving guerrilla organizations," Filipino widows and minor children of alien guerrillas cannot be held entitled to pension x x x. The only remedy is to have section 10 amended by Congress so as to grant pension also to the widows and minor

he is already a citizen." [22] It appears that Palanca applied for naturalization in 1941 and his petition was granted during the Japanese occupation. In 1945 the Solicitor General filed a motion for cancellation of the certificate of naturalization not only on the ground of disloyalty to the Commonwealth Government, but also by reason of fraudulent and illegal procurement. Counsel for Palanca joined the Solicitor General in his motion, but based his acquiescence on the ground that Palanca had no need for a certificate of naturalization because he has always been a Filipino citizen. Palanca was a Chinese subject, but by virtue of the Royal Decree issued in his favor in 1893, he became a Spanish subject. Justice Padilla, who spoke for the majority, reasoned out that pursuant to the provisions of the Treaty of Paris, Acts of Congress of 1902 and 1916, Palanca became a Filipino citizen and continued to be so under the Philippine Constitution. Hence, the Court ordered the cancellation, not on the ground of illegal or fraudulent procurement, as urged by the Solicitor General, but primarily because Palanca was already a Filipino citizen and also on account of the fact that said certificate had been issued under the authority of the enemy-sponsored Republic of the Philippines.[23]

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children who are citizens of the Philippines although the deceased veteran was not a Filipino citizen."

In Opinion No. 154, S. 1947, dated June 18, 1947, the Sec. of Justice opined that Sec. 10, Rep. Act No. 65 "does not require that the widows therein mentioned be Filipino citizens at the time of their marriage with the deceased veterans before they can enjoy the benefits thereof. Even if, however, this section were intended to benefit only Filipino citizens, an alien woman married to a citizen of the Philippines will nevertheless be entitled to the pension provided for in said Act for the reason that under our law, any alien woman who marries a citizen of the Philippines and who might herself be lawfully naturalized is considered a citizen of the Philippines, based on the principle that a married woman follows the nationality of her husband (Sec. 15, Commonwealth Act No. 473; See Roa v. Collector of Customs, 23 Phil. 315). Upon the dissolution of the marriage by the death of the husband, she does not *ipso facto* revert to her original citizenship for the reacquisition thereof will have to depend on the laws of her country. Whether the widow remains a citizen of the country of her husband, or reacquires her original citizenship upon the husband's death seems, however, not material for the resolution of the x x x query x x x because the above-cited provision declares that each widow shall be entitled to a pension of ₱50 a month until she remarries or dies, but it does not provide for the termination of such pension on the reacquisition by such widow of her original citizenship."

[22] Ruling laid down in *Santos Co v. Gov't.* (1928), 52 Phil. 543 that the child of a Filipino mother and a Chinese father is a Filipino citizen, when born in the Philippines, and therefore, there is no more need for a naturalization proceeding has been abrogated by the case of *Lam Swee Sang v. Commonwealth of the Philippines*, G.R. 47623, prom. Sept. 16, 1947.

[23] In a strong dissent, Justice Hilado held that the term "inhabitants" mentioned in the Treaty of Paris merely referred to "natives of the Peninsula" or to "native inhabitants of the territories," and did not include '*all other* inhabitants of said territories'," like Palanca. Since "he was not a natural, but merely a naturalized citizen of the former sovereign, he was remitted to his native citizenship upon the cession of the territory to the acquiring state" and therefore, Justice Hilado was of the opinion that Palanca was a Chinese citizen.

But as compared with its pronouncements in Villahermosa, Tan Chong (1947) and other cases,[24] our Supreme Court has, in Kookooritchkin v. Solicitor General, *supra*,[25] rather been liberal in its interpretation of our naturalization law.[26] The Solicitor General[27] con-

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See also Dissenting opinion of Justice Perfecto who declared that there was no necessity in finding out "whether Palanca is still a Spanish citizen or has reverted to his original Chinese citizenship. x x x No one would think that the naturalization proceedings instituted by him had been started with the purpose of performing in a judicial stage an expensive and troublesome farce. That, in order to sidetrack the frontal attack made by the Solicitor General against his certificate of naturalization, he found it expedient to adopt the theory that he did not need to be naturalized, because he is a Filipino citizen and he was so even before he applied for naturalization, is an able strategy that should not deceive courts of justice and induce them to give an imprimatur to a legal comedy."

Justice Feria did not take part in this case.

[24] In *Cantos v. Styer* (1946), 44 O.G. No. 2, pp. 453, 455-456, the Court, speaking through Chief Justice Moran held: "At any rate, we believe that the military Commission may look through the naturalization papers into the real nationality of a person with Japanese blood charged with war crimes. After due hearing the military commission found the petitioner to be a Japanese *mestizo*. The certificate of Filipino citizenship was issued in his favor after he had sworn to have renounced his allegiance and fidelity to Japan and pledged faith and allegiance to the U.S. of America and the Philippines. But there is evidence before the military commission to the effect that during the war he was a member of the Japanese civilian army and committed atrocities against unarmed and non-combatant Filipino civilians. In his oath of naturalization he swore that he owned real property in the Philippines worth ₱1,200 as required by the Naturalization Law. It appears, however, from his sworn testimony before the military commission that he never owned any property in the Philippines. If the military Commission believes, as it apparently does, that, by reason of the above circumstances the petitioner never acquired Filipino citizenship or he already lost it, we certainly find no reason to interfere."

[25] The resolution of the lower court granting the petition for naturalization filed by Eremes Kookooritchkin under the provisions of Com. Act 473, as amended, was affirmed by the Court by a unanimous decision.

[26] *Cf.* Court's interpretation in *Orestoff v. Gov't.*, 40 O.G. (13th S), (1941) pp. 37, 39-40: (Justice Imperial delivered the opinion of the Court)—"A nuestro juicio, la cuestion que se suscita no consiste en la interpretación estricta o liberal de la ley, sino más bien en su aplicación teniendo en cuenta las palabras empleadas por la misma. Como se ha visto el texto castellano usa el verbo hablar y el verbo 'to speak'. Hablar, según el diccionario de la Academia Española, quiere decir 'articular, proferir palabras para darse a entender'; según el Diccionario de Webster 'to speak' significa 'to utter words or articulate sounds with the ordinary voice.' Conforme a estás definiciones es inevitable la conclusión de que el solicitante no reune la calificación de poder hablar porque siendo sordo-mudo no puede articular ni proferir palabras para darse a entender. Creemos que la Legislatura empleó los verbos hablar y 'to speak' en ambos textos de la ley en su sentido gramatical ordinario y por esta razón no es necesario acudir a las reglas de interpretación."

See also *Gurbaxani v. Gov't.*, 40 O.G. (7th S) p. 309 (1940). In this case a Hindu became a naturalized citizen under the Jones Law by naturalization, but the Court's attention was not called to the fact that Hindus belonged to the excluded class. After the Constitution was adopted the Solicitor General moved for cancellation on the ground of fraudulent procurement in that he made a statement in the petition that he possessed all the qualifications and none of the disqualifications, when in fact he was disqualified. Cancellation was ordered. But "Certainly, it could not be said in that case that the fraud was patent and clear because the applicant openly stated in his petition that he was a native of Hyderabad, India. It was rather a case of ignorance, mistake, or negligence on the part of both the trial court granting the certificate of naturalization and the attorney representing the government." Sinco, *supra*, pp. 411-412.

[27] In *Anti-Chinese League v. Felix and Lim* (1947), 44 O.G., No. 5, pp. 1480,

tended in this case that the lower court erred in finding appellee stateless [28] and not a Russian citizen, and in not finding that he failed to establish that he was not disqualified for Philippine citizenship under section 4 (h) of the Rev. Naturalization law. The oppositor further alleged that Kookooritchkin failed to show that under the laws of Russia, he had lost his Russian citizenship and that Russia grants to Filipinos the right to become naturalized citizens or subjects thereof." [29]

The Court agreed with the petitioner that he was a stateless refugee [30] since he disclaimed allegiance or connection with the Soviet Government, to which he is uncompromisingly opposed, although he stated in his petition that he was a citizen or subject of the Empire of Russia, which ceased to exist since 1917. The Court was very liberal to the petitioner in most issues, on which, in other cases, it would have required a clearer and more convincing proof. As a matter of fact, the Court overruled most of the objections of the Solicitor General by resorting to presumptions, to show that both formal [31]

1482, the Court held that "a civic organization or association representing a group of Filipino citizens" not constituting a juridical person or entity or falling under the exceptions provided in sections 12 & 15 of Rule 3 of the Rules of Court" cannot be a party in the said naturalization proceeding" because it "has no legal interest in opposing the application x x x for naturalization. The Solicitor General, personally or through his delegate, and the provincial fiscal, are the only officers or persons authorized by law to appear on behalf of the government and oppose an application for naturalization or move for cancellation of a naturalization certificate already issued (Sec. 10, 18, Com. Act 473)".

[28] "An individual may be destitute of nationality knowingly or unknowingly, intentionally or through no fault of his own. Even by birth a person may be stateless. x x x But statelessness may take place after birth, for instance, as the result of deprivation of nationality x x x. All individuals who have lost their nationality without having acquired another are, in fact, desitute of nationality." L. Oppenheim, *International Law*, Vol. I—Peace, 6th Ed. (Lauterpacht), 1947, Longmans, Green and Co., Cambridge, England, p. 610.

[29] As to grounds for cancellation of naturalization certificates, see Sec. 18, Com. Act 473 and the cases of *Bell v. Atty. Gen.*, 56 Phil. 667, *Gurbuxani v. Gov't*, *supra*, and *Cantos v. Styer*, *supra*.

[30] As to effect on citizenship status of the Filipino wife in case she has married a stateless individual, our Supreme Court has held in *Commonwealth v. Baldello* (1939), 37 O. G. 2028, that there being no new citizenship imposed upon her by marriage, nothing could have divested her of her original citizenship, "considering the benign policy of giving greater political recognition to women" and "in view of Com. Act No. 63 which is indicative of this political recognition, however partial, accorded to Filipino women." Evidently the purpose of this rule "is to prevent such condition of statelessness in a Filipino woman married to an alien."

[31] Thus, to the contention that the declaration of intention was invalid and insufficient because Sec. 5 of the Rev. Naturalization Law requires for its validity the entry for permanent residence and a certificate or arrival; the Court held that attachment of the certificate of arrival in this case was not essential. By taking judicial notice of the fact that a Russian fleet entered the Philippines in 1923 under the command of Admiral Stark, who when their fleet was sold, about 400 refugees (the petitioner being one of them) were allowed to remain here; and resorting further to the presumption that the officials concerned were regularly performing their duties and would have arrested petitioner if his residence was illegal during the last 25 years, the Court held that Kookooritchkin

and substantial [32] requisites were complied with.

It was on account of petitioner's being a stateless person,[33] taken together with "the well-known fact that the ruthlessness of modern dictatorships has scattered throughout the world a large number of stateless refugees or displaced persons, without country and without flag" that led our Supreme Court to adopt a liberal view.[34]

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entered the Philippines lawfully and had enjoyed legally his permanent residence here. The Court further presumed that the certificate of arrival was issued, as stated in his declaration of intention in 1940, and that said certificate had been actually attached to it "because it cannot be supposed that the receiving official would have accepted the declaration without the certificate mentioned therein as attached thereto."

[32] To the contention of the oppositor that petitioner cannot speak and write any of the principal Philippine languages as shown by the fact that he fumbled and failed to translate from English to Bicol some words asked by the fiscal, such as "love"; the Court held that "The law has not set a specific standard of the required ability to speak and write any of the principle languages. A great number of standards can be set" and considered further the fact that "If appellee with his smattering of Bicol was able to get along with his Bicol comrades in the hazardous life of the resistance movement, we believe that his knowledge of the language satisfies the requirement of the law."

The Court also presumed that the petitioner ought to know also how to write Bicol since it uses the same alphabet as English; that Bicol is much easier to write than English because it is phonetic; that Bicol vowels and consonants have in them single and not interchangeable phonetic values, unlike English which deviates very often from the basic sounds of the alphabet, and held therefore that "The ability to write cannot be denied to a person like petitioner, who has undergone the exacting technical training to be able to render services as flier " and that "The difference between Cyrillic alphabet, as now used by Russians, and our Roman alphabet, cannot weigh much to deny the petitioner the ability to use the latter. A person who has shown the command of English x x x can easily make use of an alphabet of 20 or more letters x x x."

[33] Justice Perfecto, who delivered the opinion of the Court took the occasion to explain the circumstances which bring about present-day problems of displaced persons by pointing out the fact that "The tyrannical intolerance of said dictatorships toward all opposition induced them to resort to beastly oppression, concentration camps and blood purges, and it is only natural that the not-so-fortunate ones who were able to escape to foreign countries should feel the loss of all bonds of attachment to the hells which were formerly their fatherland's.

[34] Justice Perfecto also justified the liberal attitude taken by the Court in this case by declaring that "Knowing, as all cultured persons all over the world ought to know, the history, nature and character of the Soviet dictatorship, presently the greatest menace to humanity and civilization, it would be technically fastidious to require further evidence of petitioner's claim that he is stateless than his testimony that he owes no allegiance to the Russians Communist government and, because he has been at war with it, he fled from Russia to permanently reside in the Philippines. After finding in this country economic security in a renumerative job, establishing a family by marrying a Filipina with whom he has a son, and enjoying for 25 years the freedoms and blessings of our democratic way of life, and after showing his resolution to retain the happiness he found in our political system to the extent of refusing to claim Russian citizenship even to secure his release from the Japanese and of casting his lot with that of our people by joining the fortunes and misfortunes of our guerrillas, it would be beyond comprehension to support that the petitioner could feel any bond of attachment to the Soviet authorities."

See also the following Opinion of the Sec. of Justice, dated June 29, 1948: "Daniel Borodin was born in Soviet Russia of Russian parents, who, allegedly 'because of their political beliefs were forced to leave Russia and sought sanc-

"The attempts, x x x to reduce the occasions for statelessness are not only an expression of the desire to do away with a source of inconvenience to Governments and of grave hardship to individuals. They are also a recognition of the fact that so long as nationality is the link between the individual and the protection of rights accruing to him by virtue of International Law; it is both illogical and offensive to human dignity that International Law should permit a condition of statelessness." [35] By thus so deciding in the *Kookooritchkin* case, our Supreme Court has tried to solve the problem of stateless refugees.[36]

In the case of Girouard v. U.S. (1946)[37] the U.S. Supreme Court has overruled its previous ruling that professed conscientious objectors refusing to subscribe to the part of the oath pledging them to defend the U.S. against domestic and foreign enemies are ineligi-

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tuary in the Philippines', and for that matter lost their Russian citizenship, without, however, having acquired Philippine citizenship through naturalization. Neither does petitioner claim to have undergone naturalization as a Filipino citizen.

"At the outbreak of the Pacific war, applicant joined and was inducted in the USAFFE, served in Bataan until its surrender, and was made a prisoner of war in Capas and other camps, with the tattered remnants of the 31st Inf. (USA), until liberated at the termination of the war in a POW camp in Kosaka, Japan.

"He was later reprocessed as a member of the Philippine Army in detached service with the U.S. Army and has received his arrears in pay as a Philippine Army personnel."

Held: "In my opinion of Nov. 27, 1946, I ruled that 'the benefits of the Philippine Bill of Rights'" for Veterans "'are intended to be enjoyed solely by citizens of the Philippines.' A stateless person is not a citizen of the Philippines. He is, therefore, not entitled to the educational benefits provided for in section 2."

[35] Oppenheim, *supra*, pp. 614-615. "Probably measures to abolish statelessness can best be attempted on the lines of the following two principles: (1) that every individual shall be entitled to the nationality of the State where he or she is born unless on attaining majority he or she declares for the nationality which may be open to him or her by virtue of descent; (2) that no person shall be deprived of his or her nationality by way of punishment or deemed to have lost his or her nationality for any other reason, such as marriage, except concurrently with the effective acquisition of a new nationality."

[36] *See also Tan Chong* case (1947) where the Court declared: "Dual allegiance must be discouraged and prevented. But the application of the principle of *jus soli* to persons born in this country of alien parentage would encourage dual allegiance which in the long run would be detrimental to both countries of which such person might claim to be citizens."

[37] 66 S. Ct. Rep. 826-827. Said the U.S. Supreme Court: "The bearing of arms, important as it is, is not the only way in which our institutions may be supported and defended, even in times of great peril. Total war in its modern form dramatizes as never before the great cooperative effort necessary for victory. The nuclear physicists who developed the atomic bomb, the worker at his lathe, the seamen on cargo vessels, construction battalions, nurses, engineers, litter bearers, doctors, chaplains—these, too, made essential contributions x x x. Refusal to bear arms is not necessarily a sign of disloyalty or a lack of attachment to our institutions x x x. The effort of war is indivisible; and those whose religious scruples prevent them from killing are no less patriots than those whose special traits or handicaps result in their assignment to duties far behind the fighting front."

ble for naturalization,[38] thereby adopting a liberal view.

"A wise naturalization policy [39] should not make everything turn on a simple opinion of the petitioner, especially when age or sex makes that opinion of little practical importance. Instead, it would seem that admission should depend on a total impression of the petitioner's personality and devotion to "Philippine" ideals. His views on the war power x x x or any part of the Constitution [40] should merely constitute factors to be weighed in combination with his career as part of the common-sense process of determining whether this individual and his descendants will or will not be productive and valued citizens." [41]

Our Revised Naturalization Law, Commonwealth Act No. 173 (as amended by C. A. Nos. 535 and 625) repealed Act 2929, (amended by Act 3448) and has extended to aliens, subject to some exceptions, the opportunity to become citizens by naturalization. In this instance, it has removed the feature of the previous laws on the subject which discriminated in favor of Caucasians and against Asiatics.

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[38] *U.S. vs. Schwimmer* (1929) 279 U.S. 644; *Macintosh v. U.S.* (1931) 283 U.S. 605; *Bland v. U.S.* (1931) 283 U.S. 636.

[39] A naturalization policy may be availed of by a country to further its interest. Thus, "A complaint against George III in the Declaration of Independence was that he has endeavored to prevent the population of these States, for that purpose obstructing the laws for the naturalization of foreigners, and refusing to pass others to encouraged their migration hither." Thomas J. Norton, *The Constitution of the U.S.*, (1943) World Publishing Co., N.Y. p. 53.

[40] *See* 46 *Harvard Law Review* 325: "The petitioner, seeking naturalization stated that he was attached to the principles of the Constitution but that he advocated its amendment. The evidence showed that, in a newspaper which he published, he had urged amendment of the Constitution so as to place all authority in the hands of "the producers", and to substitute for private property the ownership of all property by a communistic state. A statute provides that "No alien shall be admitted to citizenship unless x x x for at least five years x x x he has behaved as a person of good moral character, attached to the principles of the Constitution of the U.S. and well disposed to the good order and happiness of the U.S. x x x Held: that the petitioner was not attached to the principles of the Constitution within the meaning of the statute. Petition denied. *In re Saralieff*, 59 F. (2d) 436 (E. D. Mo. 1932). But the present Court takes the view that the changes contemplated by the applicant were so sweeping as to amount to abolition of the Constitution. x x x The present decision appears supportable only if it viewed as a finding that the applicant's activities impeached the sincerity of his adherence to strictly constitutional methods of change."

In *Knauer v. U.S.*, 66 S. Ct. Rep. 1304, (1946) the Court held that the certificate of naturalization could be cancelled on the ground of fraudulent procurement because the petitioner was always a Nazi and it concluded that when he did not in good faith forswear allegiance to the Reich, he committed fraud since he swore falsely to the U.S. *See also Schneiderman v. U.S.*, (1943), 320 U.S. 118; *Bridges v. Wixon*, (1945), 320 U.S. 135; *Kessler v. Strecker*, (1939), 307 U.S. 22; and *Fiswick v. U.S.*, (1947), 67 S. Ct. Rep. 224.

[41] Zechariah Chafee, Jr., *Free Speech in the U.S.* (1946) Harvard University Press, Cambridge, Mass., p. 377.

The decisions of our Supreme Court on matters involving citizenship and naturalization are indeed of great importance.[42] As one author puts it, "The Court is a philosophic institution, engaged exclusively upon interpretation, charting through its semantic clairvoyance our national course in terms of decades rather than days or years. It is a moral body reaffirming the copybook of maxims of our constitutional yesterdays and determining which of them is the fit and proper tack for a line of tomorrows. It recognizes no sovereign save its own discretion and God; and it itself is the final interpreter of what God's will is for the nation. x x x It only says what ought to be and leave the 'ought' to become the 'is' through techniques of power whose odium it in no sense shares." [43]

—L. L. V. R.

[42] See however Dissenting opinion of Justice Imperial in the *Tan Chim* case: "Las razones que expone la decisión de la mayoría para liberalizar la aplicación de la Ley de Exclusion de ciudadanos de la República de China son consideraciones que atañen al poder legislativo. La facultad de los tribunales se limite a aplicar la ley. Si los chinos nacidos en Filipinas o los hijos menores de padres chinos nacidos en el país deben ser considerados como ciudadanos filipinos con derecho a entrar y residir en él, es cosa que debe decidirlo la Asamblea Nacional mediante la promulgacion de una ley adecuada."

Cf. Justice Holmes' idea of legislative leeway: "Positively, Holmes thought that the people had the right to determine their own policy—and that meant legislative leeway to do through their direct representatives what they wanted to do at any given time. It is not the business of the judiciary to determine policy, not even under cover, but only to keep policies from being downright inhumane and to make them at any given time consistent throughout the nation across the gulf of time that separates our generation from another. This right of the people includes the privilege of their making fools of themselves x x x "*T. V. Smith, supra,* p. 130.

[43] *T. V. Smith, supra,* pp. 119, 121-122.

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TRAPPINGS AND TRUTH

"BUT equity is not beguiled by appearances. The outward show and trappings of things give no necessary assurance of their true nature.—CHANCELLOR CAMPBELL.