CERTAIN VEXATIOUS QUESTIONS IN OUR NATIONALITY LAWS*

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The question of nationality has in the past been the cause of international complications or even wars that it has become the concern of international bodies which gather in convention or conferences for the purpose of finding ways and means of minimizing as much as possible the conflicts in the Municipal Laws of the various countries of the world. Such problems arise every now and then and there seems to be no end to questions growing out of such conflicts. Our nationality laws cannot be an exception to this.

It is, therefore, my desire to present to you some of the most vexatious questions in our nationality laws.

Firstly: — Whether or not it was ever the policy of the United States to extend to the Philippines the application of the principle of *jus soli* — a doctrine which predominates in the United States— a principle which was applicable in the Philippines during the Spanish Regime.

Secondly: — Whether or not by the marriage of an alien woman to a Filipino citizen which automatically make her a citizen of the Philippines, her minor children previously begotten with a deceased husband or other man, follow her new political status.

Was it ever the policy of the United States to extend to the Philippines the application of the principle of *jus soli* as it applies in the United States — a principle which was applicable in the Philippines under the Spanish regime? Is the principle of *jus soli* as enunciated in the Roa case and other cases based on it, in consonance with law? If not, why? If, in the affirmative, how far is it justified? Does the *jus soli* principle affect those persons born between the period April 11, 1899 and July 1, 1902?

Before the American Occupation in the Philippines, there had not been so much need for clarification of the provisions of the Spanish Civil Code in the matter of citizenship, because there was no such term of "Philippine citizen", or "citizenship of the Philippines", but that the natives of this country, generally, were regarded and denominated as "Spanish subjects", or "subjects of Spain".

In passing, it may be stated that under the Spanish law in the Islands, both the doctrines of *jus soli* and *jus sanguinis* were recognized in this jurisdiction as provided in Articles 17, etc., of the Spanish Civil Code, which enumerates the following as Spaniards: (a) persons born in the Spanish territory; (b) children of a Spanish father or mother, even if they were born outside of Spain; (c) foreigners who have obtained a certificate of naturalization; and (d) those who have not obtained such certificates but have acquired domicile in any town in the Monarchy.

Article 18 of the Civil Code, however, gave to children the nationality of their parents while they remain under parental authority. That in order for those born of foreign parents in Spanish territory to enjoy the benefits which paragraph 1 of Article 17 gave to them, it is indispensable requisite that the parents declare in the manner and before the official in charge of the civil registry specified in Article 19, that they choose in the name of their children, the Spanish nationality, renouncing any other. Article 19 gave to children of foreign parents born in Spanish domains the right to declare within a year following their majority or emancipation, whether they desire to enjoy the Spanish nationality.

With the change of sovereignty, however, the aforesaid provisions pertaining to nationality being political in nature, were *ipso facto* abrogated because, "pursuant to well-established public law, when a nation cedes territory to another, either in view of conquest or for some other cause... such laws which are of a political nature and pertain to the prerogatives of the previous government, immediately ceased upon transfer of sovereignty." (Op. Atty. Gen. U.S., July 10, 1899, cited in Mariano Sy-Jueco v. Manuel A. Roxas, decided by the Court of Appeals, January 31, 1941, CA-G.R. No. 7026, and also in Roa v. Collector of Customs, 23 Phil. 315). Under international practice in general, the inhabitants of ceded territories, not only automatically lose their old political allegiance but also acquire that of the annexing State. Ordinarily, the reservation is made that they conserve their original nationality by means of option. (See Garcia, "Problems of Citizenship in the Philippines", p. 19, and authorities cited).

By Article IX of the Treaty of Paris of December 10, 1898, between the United States of America and Spain, it was provided that "the civil and political status of the native inhabitants of the territories hereby ceded to the United States, shall be determined by the Congress." Filipinos remaining in this country or temporarily sojourning abroad 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... (Roa case, supra). Although they did not become citizens of the United States, the Filipinos ceased to be aliens in the sense of the immigration laws. It was not the intention of the Commissioners who negotiated the Treaty to give those inhabitants (of the Philippines and Porto Rico), the status of citizens of the United States. (Garcia, "Problems of Citizenship', p. 21; and Moore, "III Digest of International Law", p. 321.)

Despite the authority conferred upon it by the Treaty, the Congress of the United States did not enact a law to that effect until July 1, 1902, when it approved the Philippine Bill of 1902, which provides as follows:

> "That all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the eleventh day of April 1899, and then resided in the 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 10, 1898." (Section 4, Philippine Bill of 1902, which is similar to Section 7 of Act of Congress of the United States establishing civil government for Porto Rico" approved April 12, 1900.)

This is a statement of the policy for those who were Spanish subjects on April 11, 1899, meaning those who were already born and were Spanish subjects on that date; and also as to those who were born on and after the effectivity of the Act of July 1, 1902

The foregoing provision of law did not seem to cover persons born in the Philippines of foreign parents from and after April 11, 1899 to July 1, 1902. For our use in this discussion let this period be called a "vacuum" period in the absence of any law at the time.

Said specific provision was amended by an Act of Congress approved on March 23, 1912 which added the following proviso:

> "Provided, that the Philippine Legislature 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 other insular possession of the United States, and such other persons residing in the Philippine Islands who could become citizens of the United States, if residing therein."

The provisions of section 4 of the Philippine Bill of 1902 as amended by the Act of March 23, 1912, were embodied substan-

tially in the Philippine Autonomy Act of 1916, otherwise known as the Jones Law approved on August 29, 1916. This provision in addition to the treaty constitutes the basis from which an analysis may be made whether or not it was ever the intention of the United States to apply in this country the principle of *jus soli*, which predominates in the United States as it was also applicable in the Philippines during the former sovereign.

An interpretation of the above provisions of the American Law for the Philippine Islands, which has become a legal doctrine in our jurisdiction and repeatedly followed, is found in the decision of the case of Roa v. Collector of Customs, 23 Phil. 315, which said:

> "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 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 exceptions, born in the United States is a citizen of that country. Under section 4 every person born after April 11, 1899, of parents who were Spanish subjects on that date and who continued to reside in this country are at the moment of birth *ipso facto* citizens of the Philippines."

For our purposes in this discussion, it must be borne in mind that Roa was born in the Philippines in 1889 of a Chinese father and Filipino mother legally married at the time of his birth. His father went to China and died there in 1900. Roa was sent to China by his mother in 1901 for study and returned here in 1910 when he was nearly 21 years of age. The Supreme Court declared him to be a citizen of the Philippines.

This decision has been followed thereafter in a number of cases and became the rule until 30th September 1939, when in the Pas Chua case (G.R. No. 46451, 40 Off. Gaz. 2 Supp. 244), our Supreme Court abandoned it and held that a person of Chinese parentage, born in the Philippines in 1914, is not a citizen thereof, because she followed the citizenship of her parents and she was not a citizen of the Philippnies under Section 2 of the Jones Law, (Act of August 29, 1916). But in Torres v. Tan Chim (G.R. No. 46953, February 3, 1940) and in Gallofin v. Ordoñez (G.R. No. 46782, June 27, 1940, 40 Off. Gaz. 8th Supp. 122, No. 12 September 20, 1940), said Court reverted to the rule of *jus soli*.

Attention is invited to the fact that in the case of Tan Chim, the issue involved is the citizenship of his alleged father, Alejandro Tan Bangco who (latter) was born in Manila in 1893. This case is similar to the Roa case in the sense that in both cases, the subjects involved were born in the Philippines before the advent of the American sovereignty, of Chinese fathers and Filipino mothers. The Court said:

> "We can not reverse the doctrine in Roa case *supra*, if to convert him into an alien after 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."

In the Gallofin v. Ordoñez case, *supra*, Ordoñez was born in Pasay, Rizal, in 1891 of Chinese father and Filipino mother as illegitimate child.

Similarly, in Yu Ching Po. v. Gallofin, G.R. No. 46795, promulgated on October 6, 1939, it was held that a person born in the Philippines of a Filipino-mestizo father and a mestiza-Chinese mother, notwithstanding vagueness in point of paternity and maternity, because according to our decision, "no decen si es hijo de padre Filipino de madre china, o si lo es de padre chino y de madre Filipino", is a Filipino citizen, for the reason that under article 17, paragraph 1 of the Civil Code, which was in force in that year, he was a Spanish subject, which nationality he conserved.

Again on September 16, 1947, in the case of Jose Tan Chong v. Secretary of Labor, G.R. No. 47616 and Lam Swee Sang v. Commonwealth, G.R. No. 46723, jointly decided by the Supreme Court on that date, it was held that the petitioner in the first case (born in Laguna in July, 1915 of Chinese father and Filipino mother lawfully married) and the applicant in the second case (born in Jolo, Sulu, on May 8, 1900, of Chinese father and Filipino mother) who were born of alien parentage, were not and are not, under this section (section 2 of the Jones Law), citizens of the Philippines.

Then on September 26, 1952, in the case of Talaroc v. Uy, G.R. No. L-5397 in *quo warranto* proceedings instituted by defeated candidate against the election of Alejandro D. Uy on the ground that the latter was a Chinese national, the court held that Uy was a citizen of the Philippines, for having been born on Jan. 28, 1912 in Iligan, Lanao, of Chinese father and Filipino mother while his parents were living as common-law husband and wife; latter contracted religious marriage in March 1914; father having died in Iligan in 1917 and mother died a widow in 1949.

He became a citizen of the Philippines for as a minor at the time of death of his father in 1917, he followed his mother's citizenship who reacquired her original citizenship following the death of her husband.

> (Note: Com. Act 63 approved on October 21, 1936, provides certain procedure for a Filipino woman who lost her original citizenship by marriage to a foreigner, to reacquire her lost citizenship after dissolution of marriage. Hence automatic reversion was abrogated by Com. Act No. 63)

From a review of the different cases which were decided by the Supreme Court following the principle of the Roa Case, it is revealed that in the majority of such cases the persons were born in the Philippines of Chinese fathers and Filipino mothers, legally married, or in some cases born illegitimate and whose births took place before the advent of the American Sovereignty. Among such cases are Vano v. Collector of Customs, 23 Phil. 80 in which subject was born in the Philippines of Chinese father and Filipino mother in 1892; U.S. v. Ong Tianse, 29 Phil. 332, born in Leyte, in 1890 of Chinese father and Filipino mother; U.S. v. Ang, 36 Phil. 858, born in Philippines of Chinese father and Filipino mother; U.S. v. Lim Bin, 36 Phil. 924, born in Philippines in 1882 of Chinese parents; Basilio Santos Co. v. Government 52 Phil. 543, born in Malolos, Bulacan, as illegitimate child of a Chinese father and Filipino mother before the American Regime; Yu Ching Po v. Gallofin, G.R. No. 46795, promulgated on October 6, 1939, father of person involved was born in the Philippines during enforcement of the Civil Code; Mariano Sy- Jueco v. Manuel A. Roxas (Court of Appeals case) CA-G.R. No. 7026, decided on January 31 1941, born as natural son of Chinese father and Filipino mother (parents contracted marriage in 1898); Torres v. Tan Chim, G.R. No. 46953, February 3, 1940, father of person involved was born in Manila in 1893, of Chinese father and Filipino mother; and Gallofin v. Ordoñez, G.R. No. 46782, June 27, 1940, 40 Off. Gaz. 8th Suppl. 122 No. 12 September 20, 1940, born in Rizal in 1891, of Chinese father and Filipino mother (illegitimate).

As to persons born of foreign parents (Chinese parents) during the period covered by the American regime, that is, from April 11, 1899, there are only two cases so far upon which the Supreme Court make pronouncement, because for a long period of

time, the bench, the bar and the public had had the impression that the mere fact of birth in this country, of a child irrespective of the nationality of the parents, conferred citizenship upon such person.

In the case of Teofilo Haw v. Collector of Customs, 59 Phil. 612, in which Haw was born in Tayabas, in 1916, of Chinese parentage, it was held that the "petitioner's birth in the Philippines makes him a citizen of the Philippines". This is the only case decided by our Supreme Court in which the principle of *jus soli* as applied in the United States pursuant to the provision of the 14th Amendment to the Constitution, was actually applied in this jurisdiction covering persons born in the Philippines of foreign parents during the American regime. The reason of the Court was based on the 14th amendment to the Constitution of the United States which pervaded the legal minds of the Court as well as the members of the legal profession at the time, on the assumption that persons of similar circumstances if born in the United States could not have been denied admission in said country being citizens thereof, and on the strength of such an analogy, it was believed that a person born in the Philippines could not have been denied admission into the country of their birth which gave them Philippine citizenship. Such was the real impression at the time, and whether it was the correct view or not, attempt shall be made to analyze the provision of the Congressional Acts to see the real intent of Congress as embodied in the law.

Between the decision of Teofilo Haw case *supra* and that of Paz Chua case *supra*, both of whom were born in the Philippines after July 1, 1902, there is very strong reason supporting the view and which is in consonance with the law, that the *jus soli* principle was not provided in the Philippine Bill and, therefore, the mere fact of birth in this country after that date did not confer Philippine citizenship.

This new ruling on Paz Chua case to the effect that the principle of *jus soli* was not carried on in the Organic Act of 1902, was further strengthened when the same Court decided jointly the two cases by declaring that:

> "x x petitioner Jose Tan Chong in the case of Jose Tan Chong v. Secretary of Labor, G.R. No. 47616 (who was born in Laguna in 1915 of Chinese father and Filipino mother, legally married); and applicant Lam Swee Sang, in the case Lam Swee Sang v. Commonwealth, G.R. No. 47623 (who was born in Sulu, in 1900, of Chinese father and Filipino mother), were not and are not, under section 4, Act of July 1, 1902, and section 2, Act of August 29, 1916, citizens of the Philippine Islands."

Said Court further held:

> "Considering that the common law principle or rule of *jus soli* obtaining in England and in the United States as embodied in the Fourteenth Amendment to the Constitution of the United States, has never been extended to this jurisdiction (Sec. 4, Act of 1 July, 1902; Sec. 5, Act of 29 August 1916); and considering that the law in force and applicable to the petitioner and the applicant in the two cases at the time of their birth is section 4 of the Philippine Bill (Act of 1 July 1902) as amended by Act of 23 March 1912, which provides that only those inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the 11th day of April, 1899, and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands," We are of the opinion and so hold that the petitioner in the first case and the applicant in the second case, who were born of alien parentage were not and are not under said sections citizens of the Philippine Islands."
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> "Needless to say, this decision is not intended or designed to deprive, as it cannot divest, of their Filipino citizenship, those who were declared to be Filipino citizens, or upon whom such citizenship had been conferred, by the court because of the doctrine or the principle of *res adjudicata*."

The concurring opinion of Mr. Justice Hilado, in the two cases last mentioned is a simple, concise clarification of the issue in certain respects, which says:

> "I concur in the revocation of the doctrine of *jus soli* enunciated, among other cases, in the Roa v. Collector of Customs, 23 Phil. 315. Besides, the ruling of that case can not be invoked in favor of the petitioner in G.R. No. 47616 nor of the applicant in G.R. No. 47623 for the reason that, while Tranquilino Roa in that case was born in the Philippines in the year 1889, when article 17, etc. seq. of the Civil Code were yet in force here and made him Spanish subject, the said petitioner and applicant in the instant cases were born, although also in the Philippines, in 1915 and 1900, respectively, i.e. after the abrogation of said articles, due to political character, upon the change of soverignty following the Treaty of Paris ending the Spanish-American war. (Roa v. Insular Collector of Customs, 23 Phil. 315, 330; Halleck's International Law, Chapter 34, par. 14; American and Ocean Insurance Companies v. 356 Bales of Cotton, Pet (26 U.S.) 511, 542; 7 L. ed. 242). As declared in the majority opinion, *the citizenship of said petitioner and applicant should be determined as of the dates of their respective births.*
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> "At the time petitioner in G.R. No. 47616 was born (1915) the law on Philippine citizenship was contained in the Philippine Bill, section 4, as amended by the Act of Congress of March 23, 1912. Petitioner could not be a Filipino citizen upon the date of his birth because his father, who was legally married to his mother, was a Chinese citizen and not a subject of Spain on April 11, 1899, like his mother....
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> "The applicant in G.R. No. 47623 could not possibly be a Filipino citizen upon his birth (1900) because, aside from the fact that his father, who is presumed to have been legally married to his mother, was a Chinese subject, *there was no law on Philippine citizenship at that time*, because firstly even the aforesaid articles of the Civil Code had previously been abrogated, as already stated, by the change of sovereignty in the Philippines following the Spanish-American war, secondly, said articles at any rate did not regulate Philippine citizenship nor did they make said applicant's father a Spanish subject, and thirdly, the Philippine Bill was not enacted until July 1, 1902."

We are fully in accord with the majority and in the concurring opinions in the Tan Chong Case (born in Philippines in 1915) G.R. No. 47616 that the Philippine Bill of 1902 which has no provision on the application of *jus soli* principle, was applied in his case because that was the law in force at the time of his birth. But we humbly dissent from the opinion in the other case of Lam Swee Sang G.R. No. 47623 (born 1900) because there being no law on Philippine citizenship at that time, the principle of *jus sanguinis* was applied to him by the court. In the absence of law at the time of Lam Swee Sang's birth in Sulu, the next question is: How should his citizenship be determined?

The Civil Code provisions on citizenship were by the time of his birth already abrogated; the Philippine Organic Act cannot apply to him for the simple reason that its provisions while determining the political status of the native inhabitants of the Philippines as of April 11, 1889, as agreed in the Treaty of Paris, cannot apply retroactively upon persons born in the Philippines before it became effective in 1902; hence, the Court declared him to be *not* a citizen of the Philippines, for he followed the Chinese nationality of his parents, who were Chinese citizens at the time of his birth.

But the Court failed to consider the case from another angle, that is, it should have laid stress on the fact that at the time of

birth of applicant in this country, the Philippines was already a territory of the United States, in which the democratic way of life was more pronounced than in any part of the world. It should have been borne in mind by said Court that any person born like the circumstances of the applicant (1900) in P.I., began to breath a new air in a new atmosphere, under a democracy whose prevailing rule was to the effect that the mere fact of birth in the United States conferred citizenship upon such person, irrespective of his parents' citizenship. That was the paramount principle which predominated in the new sovereign country then and at the present time. We do not believe that the United States could have disregarded the position of those situated like the applicant, when even the early justices of the Supreme Court of the Philippines entertained the view as Mr. Justice Malcolm said in his concurring opinion in the Lim Bin case *supra*, that the principle of *jus soli* was applicable in this country *with limitation*, on the basis of the case of U.S. v. Wong Kim Ark, 169 U.S. 649. During the period of indecision on the part of the United States until the Organic Act of 1902 was actually enacted, the benefit of such an indecision should be in favor of the persons who would otherwise be prejudiced thereby. And such rights acquired during said vacant period, cannot be abridged by any subsequent legislation in the same way that rights to life, liberty and property should be protected.

Although the Constitution of the United States did not extend to the island *ex propio vigore*, however, the same principle upon which the Government of the United States lies, and which underlie the protection of life, liberty and property, carry with them the right to the possession of a certain kind of political status which should naturally identify them as a result of their birth in a United States territory. The former sovereign actually applied in the Philippines the same principle or doctrine of *jus soli* as it was and is still being applied in the United States. And no justifiable reason may be attributed, why same principle should not be applied in the Philippines during this vacuum period. It would seem an injustice to let such persons' status to hang in the balance during such period of indecision on the part of the United States. Such an indecision on the part of the new sovereign cannot and should not prejudice the rights of person who would have been adversely affected thereby. The fundamental reasons relied upon by the Supreme Court of the Philippines in the Roa case and the subsequent cases based on it, we honestly believe, while not exactly applicable or appropriate on the circumstances of the Roa and similar cases, for they were born during the Spanish Regime, would, undoubtedly, be the very same fundamental and persuasive reasons which very aptly would fit and uphold the rights acquired by the persons born during the vacant (vacuum) period between April 11, 1899 and July 1, 1902, exclusive.

The circumstances of these persons differentiate or distinguish their status from those born after the enactment of the Philippine Bill of 1902, it being the expression of the policy of the United States in the Philippines and should govern in determining the citizenship of persons born after the latter date.

SUMMARY OF PART I

Summarizing our analysis of the antecedents, the development or evolution of the Philippine laws on citizenship, starting from the Spanish Regime, through the period of the Military-Civil Occupation, to the period of the Civil-Autonomous Administration by the United States of America, and the trends of the construction or interpretation of said laws by the Courts of this country, bearing specifically on the present inquiry — whether or not it was ever the policy of the United States to extend here the principle of *jus soli*, it is our conviction that the following points may now be considered as clear and uncontradicted:

Firstly. — That there is actually no basis, and therefore, no justification for the Courts to have over-used the term "*jus soli*" allegedly as a doctrine in this jurisdiction in connection with the interpretation of section 4 of the Philippine Bill of 1902 and section 2 of the Jones Law of 1916, in view of the fact that the persons or individuals whose citizenship was then involved, were persons born in the Philippines of Chinese fathers and Filipino mothers, before the advent of the American sovereignty in the Philippines. Therefore, their citizenship was governed by the law then in force and effect, such as the Spanish Civil Code, and not by the Philippine Organic Acts.

Secondly. — There was actually no specific provision in the Philippine Organic Acts (of 1902 and of 1916) in question, from which it might be considered or inferred that the mere fact of birth in this country from and after July 1, 1902, conferred citizenship upon those born thereafter in this country.

Thirdly. — That the period from April 11, 1899 to July 1, 1902, exclusive, is a vacant or vacuum period which is characterized by the absence of specific law on citizenship.

Fourthly. — That the citizenship of persons born in the Philippines, should be determined as of the dates of their respective births, and by the law then in force at the time.

CONCLUSION TO PART I

Consequently, it may be concluded that in not incorporating the principle of *jus soli* within the terms and provisions of the aforementioned Organic Acts of 1902 and 1916, the United States, either inadvertently or deliberately, did not extend the application of the principle of *jus soli* to the Philippines, at least from and after July 1, 1902, when for the first time, Congress expressed in law its own policy in the Islands. That though said principle or doctrine of *jus soli* was not actually adopted as a policy when Congress enacted the Organic Act of 1902, it should undoubtedly be considered as applying in this jurisdiction *with limitation*, at least from April 11, 1899 to July 1, 1902, exclusive, as a necessary alternative to upset any possible injustice or discrimination against the people affected, and as a necessary consequence of the fundamental principles which underlie the protection of life, liberty and property as embodied in Great Bill of Rights of the United States.

RECOMMENDATION TO PART I

In view of the foregoing clarification, it is our humble and considered view as we strongly recommend to all concerned, that in matters of citizenship, the following rules be adopted in determining questions of citizenship in the manner suggested by Mr. Justice Malcolm of the Supreme Court in the case of U.S. v. Lim Bin, *supra*, and Mr. Justice Jose Lopez Vito, of the Court of Appeals, in the case of Mariano Sy-Jueco v. Roxas, *supra*, with our humble amplifications, to wit:

1. If the child was born before the date on which the Spanish Civil Code took effect in the Philippines, his citizenship should be governed by the laws then in force, especially the Royal Decree of November 17, 1852, the Law of September 18, 1870, and the Law of the 3rd Title, 11th Volume of the 6th Novisima Recopilacion;

2. If he was born after the Spanish Civil Code went into effect in these Islands, but previous to the acquisition of said Islands by the United States, the citizenship of the child must be governed by the provisions of the Civil Code;

3. If he was born after the Philippines were ceded to the United States and before any law was promulgated on July 1, 1902, — defining the status of the natives of the Philippines, his citizenship should be governed by the American law on citizenship, especially the 14th Amendment to the United States Constitution, and the interpretation made by the Supreme Court of the United States in the case of U.S. v. Wong Kim Ark, 1897 (169 U.S. 469), an interpretation which constitutes a legal doctrine applicable to a territory of the United States, at least, during the vacant (vacuum) period when there was no law on citizenship in this jurisdiction;

4. After the acquisition of the Philippine Islands by the United States, by virtue of the Treaty of Paris, and after the actual enactment of the Philippine Bill of July 1, 1902, the citizenship of persons born thereafter must be governed by the said Organic Acts.

— II —

Finally, we come to the second question — whether or not a minor child of an alien woman who automatically becomes a Philippine citizen by reason of her marriage to a Philippine citizen, also becomes *ipso facto* a citizen of the Philippines? That is, does an alien minor step-child of a Filipino citizen step-father become also a Philippine citizen like the mother? Is the citizenship acquired by marriage a naturalization within the meaning of Section 15 of Commonwealth Act No. 473, otherwise known as the Revised Naturalization Law? Is there such thing as naturalization by marriage which may transmit citizenship to the wife's minor children by previous marriage or previous illicit relations with other man? And what is the citizenship of a minor child of a foreign divorcee mother who becomes a Filipino citizen by marriage to a Filipino, assuming that the divorce is cognizable in this country?

The law applicable or which has a bearing on the foregoing questions, is section 15, paragraphs 1 and 3, thereof, which provides as follows:

> "Effect of the naturalization on wife and children. — Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be naturalized, shall be deemed a Philippine citizen.
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> "A foreign-born minor child, if dwelling in the Philippines at the time of the naturalization of the parent, shall automatically become a Philippine citizen, and a foreign-born minor child, who is not in the Philippines at the time the parent is naturalized, shall be deemed a Philippine citizen only during his minority, unless he begins to reside permanently in the Philippines when still a minor, in which case, he will continue to be a Philippine citizen even after becoming of age."

The foregoing provisions are quoted for purposes of reference whether they really apply to the questions under scrutiny in view of the mother's acquisition of Philippine citizenship by virtue of such marriage, and whether further there is such thing as "naturalization by marriage."

The first paragraph of Section 15 above quoted, confers Philippine citizenship upon alien woman upon her marriage to a citizen of the Philippines, if such alien woman herself might herself be lawfully naturalized. The phrase "who might herself be naturalized", does not require that the woman shall have the qualifications of residence, etc. as in the naturalization proceedings, but merely that she is of the class or race of persons who may be naturalized. Inasmuch as race qualification has been removed from our Naturalization Law, it results that any woman who marries a citizen of the Philippines prior to or after June 17, 1939, and the marriage not having been dissolved, and on the assumption that she possesses none of the disqualifications mentioned in section 4, Commonwealth Act No. 473, follows the citizenship of her Filipino husband. (Garcia "Problems of Citizenship" p. 122, and authorities cited). Although this paragraph provides for the conferment of citizenship upon the alien wife who marries a Filipino citizen, it cannot be said that she acquires it by naturalization although the provision is included in section 15 of the naturalization law. At most it may be said that marriage is a form of acquisition of citizenship, not necessarily as a form of naturalization, but following the principle of unity of nationality in the family, and following our system of the family in which the father-husband is the head. While marriage is a form of institution and a source of acquisition of citizenship, it is not a kind of naturalization, because naturalization implies certain form of procedure, be it in court or in executive or administrative agency, to be followed with some formality of some kind as a pre-requisite, where the petitioner is the head of the family, that is, the husband-father. In his default, however, if the wife so desires, then she has to comply with certain requirements as to qualifications and disqualifications, etc.

But in case of marriage as a source of citizenship, the fact of marriage alone, without disqualification due to war or due to lack of reciprocity as provided in Section 4, and without even taking an oath of allegiance, confers citizenship of the Filipino husband upon the alien wife. In short, if citizenship is transmitted to the alien wife, it is by her marriage that she acquires a distinct status whose personality is merged with her husband from whom she derives her new political status.

The next question which now presents itself is: Is this new citizenship of the wife transmissible from her to her minor children previously born to her with another man, be it her legal husband or not? Does not the child possess a certain citizenship already conferred upon him by reason of his birth, be it under the principle of *jus soli* or *jus sanguinis?* Could such citizenship of the minor children acquired when born, be merely laid aside as easy as that and get another upon the change of nationality by the mother?

In at least three Opinions, the Secretary of Justice expressed the view based on the alleged rule in the United States, to the effect that minor children of alien woman who automatically became citizens of the Philippines by reason of their marriage to naturalized citizens, also *ipso facto* became citizens of the Philippines. These are Op. No. 1, s. 1954 in the case of Sophie and Betty Lian, 19 and 18 years of age, born in China of Chinese parents; mother, after becoming a widow, married another Chinese, who later was naturalized as citizen of the Philippines, were likewise considered citizens; and Op. No. 111, s. 1953 re-citizenship of Zosimo Tan who was also considered as Filipino citizen, based on similar circumstances. The case of a certain Pascual, Op. No. 147, s. 1953 who was born in 1915 of Spanish parents, his father having died in 1916, his mother married a citizen of the Philippines, was also considered citizen of the Philippines following the same vein as the other two Opinions. These three opinions were based on some American authorities to the effect that:

> "When the husband of an alien woman becomes a naturalized citizen, she and her infant son, dwelling in this country, become citizens of the United States as fully as if they have become such in the special mode prescribed by the naturalization laws. United State ex rel. Fisher V. Rogers, U.S. Com'r et al., 144 Fed. p. 711; 712; United States v. Keller /c.c./13 Fed. 92; Kelly v. Owen, 7 Wall./74 U.S./26 Fed./2nd/148, 149."

Assuming the child in the American cases cited to be that of a previous husband of the woman, that is, step-child of the naturalized citizen, still we cannot be guided by such a ruling in the United States, because, there is such a lot of differences in our Constitution and other laws on citizenship, from the laws on citizenship in the United States. In the United States, an American woman who marries an alien does not follow her husband's nationality, which is opposed to ours. Under the American law they follow certain procedure for naturalization of alien women married to citizens of the United States. Be it as it may, we must bear in mind that we have our own law on the subject which we will attempt to analyze for our clarification

For instance, there is nothing to infer from the provision of paragraph 3 of section 15, Com. Act No. 473, from which it may be inferred that an alien woman who acquired citizenship by reason of marriage, may in turn, transmit, such high privilege of citizenship to her minor children of a previous marriage. In fact the title of section 15, "Effect of naturalization on wife and children", indicates and refer only to the legal wife and legitimate children of applicant-husband-father of the family to which his

step-children —children of his wife with a previous husband, have no relation to him as would have the benefit of the effects of naturalization.

It must be stated further that the foreign wife who becomes a citizen by virtue of the marriage, has no privilege of her own, to re-transmit what has been transmitted to her on the virtuality of that marriage, for her own personality is merged with her Filipino husband who is the head and the fountain source of such right or high privilege. This is founded on the very principle which underlie our unique system of family institution, in which even in questions of inheritance certain legitime is reserved upon the forced heirs, and on this analogy the logical conclusion is that the step-children of the Filipino citizen, husband of the child's mother, shall not have such right of succession to the privilege of citizenship coming solely from the step-father.

But it may be argued that since she is the only surviving guardian of her own minor children, her minor children should follow her citizenship. As a matter of fact, in the dissenting opinion in the case of Villahermoso v. the Commissioner of Immigration, G.R. No. L-1663, March 31, 1948, 45 Off. Gaz. 167, No. 9 Suppl. where a minor child of a Filipino woman married to a Chinese alien, does not follow the mother's citizenship following the death of her alien husband. Messrs. Justices Perfecto and Tuazon (dissenters) argued that under Art. 18 of the Civil Code, "children, while they remain under parental authority, have the nationality of their parents," and that "since minor children depend on their parents for their subsistence, support and protection, it stands to reason that they should follow the nationality of said parents." This was the same argument used in the Roa case, supra, that "the 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 marriage by death, she converts *ipso facto* to her original status unless her conduct or acts show that she elects the nationality of her deceased husband."

The dissenting opinion, while pointing to natural law as a basis of unity of citizenship, such is not the case in the question at issue, firstly because Article 18 of the Civil Code has already been abrogated by change of sovereignty, and secondly, the principle that "a minor child follows that of its surviving parent-the mother", was abandoned when section 1(4), Art. IV, of the Constitution was adopted to the effect that children of Filipino woman married to foreigner continue to be aliens until upon reaching the age of majority, they elect Philippine citizenship. In view of said Constitutional provision, the Supreme Court held in the Villahermosa case, *supra*, that "Commonwealth Act No. 63, does not provide that upon the repatriation of a Filipina her children acquire Philippine citizenship. It would be illogical to consider Delfin as repatriated like his mother, because he never was a Filipino citizen and could not have acquired such citizenship." Continuing, the Court said:

> "While his Chinese father lived, Delfin was not a Filipino. His mother was not a Filipino; she was a Chinese. After the death of his father, Villahermosa continued to be a Chinese, until she reacquired her Philippine citizenship in April, 1947. *After that reacquisition Delfin could claim that his mother was a Filipina within the meaning of paragraph 4, section 1, of Article IV, of the Constitution; but according to same Organic Act, he had to elect Philippine citizenship upon attaining his majority.*"

If the Philippine Constitution (Sec. 1(4), Art. IV), as interpreted by the Supreme Court in the Villahermosa case, supra, promulgated a policy in which, despite the repatriation of a Filipino woman to her original Philippine citizenship as Filipina after the death of her alien husband, her minor son does not follow the Philippine citizenship of his Filipina mother, considering even the fact that such a child has in his blood 50% alien and 50% Filipino, it would be the height of injustice, and certainly contrary to the spirit of the Constitution, to make as Philippine citizen ipso facto as its worst, any full-blooded alien minor child of full-blooded alien mother who automatically became a citizen by her marriage to a Filipino husband. It could not have been intended by the legislators to provide such an easy way of making alien children citizens of the Philippines, and yet deny similar privilege to a child of a Filipino woman even after her repatriation as such Filipino citizen.

It is true that it used to be the rule in this jurisdiction previous to adoption of the Constitution and the enactment of Com. Act No. 63, that "a Filipino woman married to a Chinese by placing herself within the jurisdiction of the Philippines after the death of her husband *ipso facto* followed her nationality she being the legally surviving guardian." But such old rule (in the Roa case *supra*) was abandoned upon the adoption of the Constitution and the enactment of Com. Act 63, and, therefore, any rule or principle borrowed from the American decisions or jurisdiction which are in conflict with our Constitution and laws should be disregarded and forgotten.

As the Constitution is a key to the interpretation of the provision of the Naturalization Law in question, so is the provision of section 13 of the Philippine Immigration Act of 1940 (Com. Act No. 613) which must be availed of as may aid in the clarification of other provisions of other law. Said Immigration Law provides for admission into the Philippines of certain "non-quota immigrants", without regard to the quota limitations, precisely because of some special consideration such as family relationship to citizen of the Philippines — a provision which forsees a contingency as brought about by cases of a nature like one under inquiry.

Sec. 13 of Com. Act No. 613 provides:

> "Under the conditions set forth in this Act, there may be admitted into the Philippines immigrants termed 'quota immigrants' not in excess of 50 of any one nationality x x x except that the following immigrants, termed 'non-quota immigrants' may be admitted without regard to such numerical limitations. x x x
>
> "(a) The wife or the husband or the unmarried child under twenty-one years of age of a Philippine citizen, if accompanying or following to join such citizen."

In adopting this provision in the Immigration Act, the legislature must have in mind cases like step-children, children, or husband or wife of citizens. To our point of view, and this is the most logical conclusion, that these among others are the very concrete examples of non-quota immigrants who are permitted to come under section 13 of the Immigration Law to enable them to enjoy the company of those under and with whose care and protection they want to come and join in the Philippines. The difference of nationality among members of a family due to inter-marriages, is the very contigency envisioned in this provision of the law, which fortunately, is an aid to the clarification of the naturalization act.

There is another important consideration which supports our view that while the alien woman becomes a citizen by marriage to a Filipino, the children of said woman by previous husband, do not become so, for it would contravene another provision of the naturalization law, for in section 2, par. sixth, among the qualifications required of applicants for naturalization is that "he must have enrolled his minor children of school age, in any of the public schools or private schools x x x where Philippine history, government and civics are taught x x x". The Supreme Court considered this qualification a very important one, stating that "the legislator evidently holds all the minor children of the applicant for citizenship must learn Philippine history, government and civics, *inasmuch as upon naturalization of their father they ipso facto acquire the privilege of Philippine citizenship.*" (underscoring ours). In not granting the application for naturalization of the applicant

(*Continued on page 310*)

to all of which the parties have given much attention — these are matters of form which do not alter the essential nature of the relationship of the parties to the transactions as revealed by the fundamental facts of record.

It is contended that "if the Public Service Act were to be construed in such a manner as to include private lease contracts, said law would be unconstitutional," seemingly implying that, to prevent the law from being in contravention of the Constitution, it should be so read as to embrace only those persons and companies that are in fact engaged in public service" with its corresponding qualification of an offer to serve indiscriminately the public."

It has been already shown that the petitioners' lighters and tugboats were not leased, but used to carry goods for compensation at a fixed rate for a fixed weight. At the very least, they were hired, hired in the sense that the shippers did not have direction, control, and maintenance thereof, which is a characteristic feature of lease.

On the second proposition, the Public Service Commission has, in our judgment, interpreted the law in accordance with legislative intent. Commonwealth Act No. 146 declares in unequivocal language that an enterprise of any of the kinds therein enumerated is a public service if conducted for hire or compensation even if the operator deals only with a portion of the public or limited clientele.

It has been seen that public utility, even where the term is not defined by statute, is not determined by the number of people actually served. Nor does the mere fact that service is rendered only under contract prevent a company from being a public utility. (43 Am. Jur. 573.) On the other hand, casual or incidental service devoid of public character and interest, it must be admitted, is not brought within the category of public utility. The demarkation line is not susceptible of exact description or definition, each case being governed by its peculiar circumstances.

"It is impossible to lay down any general rule on the subject whether the rendering of incidental service to members of the public by an individual or corporation whose principal business is of a different nature constitute such person a public utility. In the result reached, the cases are in conflict, as the question involved depends on such factors as the extent of service, whether such person or company has held himself or itself out as ready to serve the public or a portion of the public generally, or in other ways conducted himself or itself as a public utility. In several cases, it has been held that the incidental service rendered to others constituted such person or corporation a public utility, but in other cases, a contrary decision has been reached." (43 Am. Jur. 573.)

The transportation service which was the subject of complaint was not casual or incidental. It has been carried on regularly for years at almost uniform rates of charges. Although the number of the petitioners' customers was limited, the value of goods transported was not inconsiderable. Petitioners did not have the same customers all the time embraced in the complaint, and there was no reason to believe that they would not accept, and there was nothing to prevent them from accepting, new customers that might be willing to avail of their service to the extent of their capacity. Upon the well-established facts as applied to the plain letter of Commonwealth Act No. 146, we are of the opinion that the Public Service Commission's order does not invade private rights of property or contract.

In at least one respect, the business complained of was a matter of public concern. The Public Service Law was enacted not only to protect the public against unreasonable charges and poor, inefficient service, but also to prevent ruinous competition. That, we venture to say, is the main purpose in bringing under the jurisdiction of the Public Service Commission motor vehicles, other means of transportation, ice plants, etc., which cater to a limited portion of the public under private agreements. To the extent that such agreements may tend to wreck or impair the financial stability and efficiency of public utilities who do offer service to the public in general, they are affected with public interest and come within the police power of the state to regulate.

Just as the legislature may not "declare a company or enterprise to be a public utility when it is not inherently such," a public utility may not evade control and supervision of its operation by the government by selecting its customers under the guise of private transactions.

For the rest, the constitutionality of Commonwealth Act No. 146 was upheld, implicity in Luzon Brokerage Company v. Public Service Commission, *supra*, and explicitly in Pangasinan Transportation Co. v. Public Service Commission, 70 Phil. 221.

Were there serious doubts, the courts should still be reluctant to invalidate the Public Service Law or any provision thereof. Although the legislature can not, by its mere declaration, make something a public utility which is not in fact such, "the public policy of the state as announced by the legislature will be given due weight, and the determination of the legislature that a particular business is subject to the regulatory power, because the public welfare is dependent upon its proper conduct and regulation, will not lightly be disregarded by the courts." (51 C. J. 5.)

The objection to the designation of Attorney Aspillera as commissioner to take the evidence was tardy. It was made for the first time after decision was rendered, following a prolonged hearing in which the petitioners cross-examined the complainant's witnesses and presented their own evidence.

The point is procedural, not jurisdictional, and may be waived by expressed consent or acquiescence. So it was held in Everret Steamship Corporation v. Chua Hiong, G. R. No. L-2933, and La Paz Ice Plant and Cold Storage Co. v. Comision de Utilidades Publicas et al., G. R. No. L-4053.

Upon the foregoing considerations, the appealed order of the Public Service Commission is affirmed, with costs against the petitioners.

Paras, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo; Bautista Angelo and *Labrador, J.J.*, concur.

CERTAIN VEXATIOUS QUESTION...

(*Continued from page 270*)

in Tan Hi v. Republic, G.R. No. L-3354, decided on January 25, 1951, the Supreme Court cited a previous decision of said Court which denied the application on the ground that "the applicant for naturalization had nine children all enrolled in the Philippine schools except one, a minor because she live from infancy in China, where she was enrolled in an English school in Amoy."

From this decision of the Court it appears in bold relief that if in an ordinary naturalization case the non-enrollment of a child because she is studying in her native country is a ground for rejecting an application for naturalization, it results by inference that children of mothers marrying Filipino citizens, much less cannot become citizens of the Philippines for that matter.

CONCLUSION AND RECOMMENDATION TO PART II

Any other interpretation to the contrary, like the three Opinions of the Secretary of Justice hereinabove referred to, would lead to injustice, inequity, and even absurd results, which, perforce, must be avoided, for it would give rise to incongruous possibilities wherein full-blooded aliens with no interest or background on our social, political, and economic way of life could otherwise be Filipino citizens merely on papers contrary to the spirit of our Constitution and laws on the matter.

On the whole, therefore, whether the children of the foreign woman are legitimate or illegitimate, and whether the mother is a divorcee, or not, and on the assumption that such minor children have already citizenship of their own, such citizenship which the Municipal Law of the country of their birth has conferred upon them, be allowed to continue the same citizenship—a suggestion or a course which would tend to reduce conflicting problems of citizenship in the future.