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*Cuenco vs. Secretary of Justice*

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illegal searches and seizures (*Magoncia vs. Palacio*, 80 Phil. 771, citing *Uy Kheytin vs. Villarcal*, 42 Phil. 886).

No. L-18069. May 26, 1962.

ALFONSO DY CUENCO, petitioner-appellee, vs. THE HONORABLE, THE SECRETARY OF JUSTICE, and THE HONORABLE, THE COMMISSIONER OF IMMIGRATION, respondents-appellants.

*Citizenship; By election; Conditions.*—Pursuant to the provision of Section 1, Paragraph (4) of Article IV of the Constitution, two (2) conditions must concur in order that the election of Philippine citizenship therein mentioned may be effective, namely: (a) the mother of the person making the election must be a citizen of the Philippines; and (b) said election must be made “upon reaching the age of majority”.

*Statutory construction; “Upon reaching the age of majority” construed.*—There must be made within the election of citizenship a reasonable time after reaching the age of majority and one who over seven (7) years after reaching said age has not done so within a reasonable time.

APPEAL from a decision of the Court of First Instance of Manila.

The facts are stated in the opinion of the Court.

*Platon A. Baysa* for petitioner-appellee.

*Solicitor General* for respondents-appellants.

CONCEPCION, J.:

Appeal from a decision of the Court of First Instance of Manila. The case is before us for the main facts have been stipulated and only questions of law are involved in the appeal.

It appears that on May 19, 1951, a counsel for petitioner Alfonso Dy Cuenco wrote to the Commissioner of Immigration a letter requesting the cancellation of his alien certificate of registration, upon the ground that he had exercised the right to elect Philippine citizenship pursuant to Article IV, section I(4) of the Constitution and Commonwealth Act No. 625. Said election appears in an affidavit dated May 15, 1951, stating, among other things, that petitioner was born in Dapa, Surigao, on February 16, 1923; that his parents are “Benito Dy Cuenco, Chinese (now deceased)” and “Julita Duyapit, Filipina, a native

*Cuenco vs. Secretary of Justice*

of Surigao, Philippines"; that he is "married to Rosalinda Villanueva, a Filipina," by whom he has four (4) legitimate children; that he renounces all allegiance to the Republic of China; that he recognizes and accepts the supreme authority of the Republic of the Philippines and will maintain true faith and allegiance thereto; and that he will obey, support and defend the Constitution and laws of the Philippines. On the same date, petitioner, likewise, took the corresponding oath of allegiance to the Republic of the Philippines.

The Commissioner of Immigration referred the matter to the Secretary of Justice who, on June 18, 1957, rendered an opinion (No. 129) holding that the alleged Philippine citizenship of petitioner's mother had not been sufficiently established, that said election of Philippine citizenship by petitioner herein was legally ineffectual and that he did not thereby become a Filipino citizen. Petitioner sought a rehearing and a reconsideration of said opinion. In the course of said rehearing he tried to establish that his delay in electing Philippine citizenship was due to the belief that he was a citizen of the Philippines. Once again, the Commissioner of Immigration referred the matter to the Secretary of Justice, who denied the petition for reconsideration on January 27, 1959.

About a year later, or on January 9, 1960, petitioner instituted in the Court of First Instance of Manila the present action for mandamus against the Secretary of Justice and the Commissioner of Immigration, to compel them to recognize as valid said election of Philippine citizenship by petitioner and to cancel his alien's certificate of registration. In their answer to the petition for mandamus, respondents assailed petitioner's right to said writ, but, after appropriate proceedings, said court rendered judgment for the petitioner. Hence, this appeal by respondents.

Petitioner's cause of action is based upon Article IV of our Constitution, the pertinent part of which reads:

"SECTION 1. The following are citizens of the Philippines:

x x x x

"(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine Citizenship."

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*Cuenco vs. Secretary of Justice*

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Pursuant to this provision, two (2) conditions must concur in order that the election of Philippine citizenship therein mentioned may be effective, namely: (a) the mother of the person making the election must be a citizen of the Philippines; and (b) said election must be made "upon reaching the age of majority."

In the case at bar, the only evidence on the political status of petitioner's mother, Julita Duyapat, consists of a certificate of baptism, stating that Julita Gonzaga was born in General Luna, Surigao, on July 30, 1881, and that her parents were Marcelino Duyapat and Consolacion Gonzaga and a picture showing that she has the features of a Filipina and is attired in the typical dress of a Filipina. Considering that the writ of mandamus will issue, not to control the exercise of judgment in the construction of a law and the application of the facts thereto (*Policarpio vs. Veterans Board*, 52 Off. Gaz., 6178; *Behn, Meyer & Co. vs. Autholty*, 51 Phil. 796), but merely to exact compliance with a clear legal duty resulting from an office trust or station (*Viuda e Hijos de C. Zamora vs. Wright*, 53 Phil. 613; *Ng Gioc Lin vs. Secretary of Foreign Affairs*, 47 Off. Gaz., 5112), we are not prepared to hold that the Secretary of Justice erred in finding that said proof is insufficient to establish that petitioner's mother was a citizen of the Philippines.

Regardless of the foregoing, petitioner was born on February 16, 1923. He became of age on February 16, 1944. His election of citizenship was made on May 15, 1951, when he was over twenty-eight (28) years of age, or over seven (7) years after he had reached the age of majority. It is clear that said election has not been made "upon reaching the age of majority."

It is true that this clause has been construed to mean a reasonable time after reaching the age of majority, and that the Secretary of Justice has ruled that three (3) years is the reasonable time to elect Philippine citizenship under the constitutional provision adverted to above, which period may be extended under certain circumstances, as when the person concerned has always considered himself a Filipino. For this reason, petitioner introduced evidence to the effect that he is referred to as a Filipino in his birth

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*Augusto vs. Abing*

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certificate, in his marriage contract and in the birth certificates of his children; that he married a Filipina; and that he enlisted in the Philippine guerrilla forces in December, 1942.

It should be noted, however, that he joined a unit of *Chinese* volunteers and that he registered himself in the Bureau of Immigration as a Chinese. Moreover, it appears that, as early, at least, as 1947, petitioner knew that he had to make a formal election, if he wanted to be a citizen of the Philippines, and yet he did not do so until four (4) years later, or in May 1951. The reasons given by him for such delay were his alleged financial difficulties and the illness of members of his family. We agree with the Secretary of Justice that such explanation is patently insufficient to excuse said delay or to warrant extension of the period to elect Philippine citizenship.

WHEREFORE, the decision appealed from is hereby reversed, and another one shall be entered dismissing the petition, with costs against petitioner. It is so ordered.

*Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Paredes and Dizon, JJ.*, concur.

*Barrera, J.*, took no part.

*Bengzon, C.J.*, is on leave.

*Decision reversed.*

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No. L-16732. May 29, 1962.

RAMON AUGUSTO, MARIA AYING, SILVESTRA BANCALE, CLEMENCIA IGOT, SILVERIO IGOT, FILOMENA MALINGEN, MAXIMO SILAWAN, MAXIMO YGOY and DEMETRIO YGOY, plaintiffs-appellants, *vs.* ARCADIO ABING, PAULINO SINERPEDA, CRISANTO CARILLAS, BERNARDO DIHAYCO, ISIDRO MALINGEN, ESTANISLAO MAHUSAY, ANACLETO YGOY, SATURNINO SILAWAN and SANTIAGO DIHAYCO, defendants-appellees.

*Courts; Jurisdiction, distinct claims against common defendant arising out of the same transaction; Test for determining jurisdiction.*—Where several plaintiffs, having separate and distinct claims against a common defendant arising out of the same transaction or series of transactions and involving the same question of law or fact, jointly sue said defendant as al-