In the case of Palmer *vs.* Foley (71 N. Y., 106, 108), Judge Folger expresses this condition of the law:

"It seems that, without same security given before the granting of an injunction order, or without some order of the court or a judge, requiring some act on the part of the plaintiff, which is equivalent to the giving of security—such as a deposit of money in court—the defendant has no remedy for any damages which he may sustain from the issuing of the injunction, unless the conduct of the plaintiff has been such as to give ground for an action for malicious prosecution."

To the same effect are the following cases: Lawton *vs.* Green (64 N. Y., 326), McLaren *vs.* Bradford (26 Ala., 616), Robinson *vs.* Kellum (6 Cal., 399), Asevado *vs.* Orr (100 Cal., 293, 34 Pac., 777), Harless *vs.* Consumers' Gas Trust Co. (14 Ind. App., 545, 43 N. E., 456), Cox *vs.* Taylor's Admr. (49 Ky., 17), Hayden *vs.* Keith (32 Minn., 277, 20 N. W., 195), Manlove *vs.* Vick (55 Miss., 567), Keber *vs.* Mercantile Bank (4 Mo. App., 195), Iron Mountain Bank *vs.* same (id., 505), Campbell *vs.* Carrol (35 Mo. App., 640). Mark *vs.* Hyatt (31 N. E., 1099), Gordon *vs.* Brown (27 Ill., 489, 81 Am. Dec., 245), Hutchins *vs.* Rogers (22 Wkly. Notes Cas., 79).

Here we have a case in which the action, in a sense, was improperly brought and the injunction was, in the same sense, improperly obtained. That does not mean, as we have seen, that the plaintiff is, for that reason, liable for the damages which the defendant may have suffered. Before that liability can attach, it must appear that the action was brought and the injunction obtained maliciously and without probable cause. Of course, if the injunction bond were relied upon, as it was as to part of the defendants, we would have a case in which the lack of probable [69] cause and the malice would be immaterial; but it is conceded that Somes did not sign the bond and that he cannot, therefore, be held responsible thereon.

Having found that, conceding that the injunction remained in force until after the levy and sale by Somes, the plaintiff cannot recover, it becomes unnecessary to determine whether the injunction was really existent at that time or whether it was merged in the final judgment of the Supreme Court of January 20, 1908, or in the judgment of the Court of First Instance of December 7, 1908, the judgment determining the relative rights of Molina and Somes in the proceeds of the property here in suit.

The judgment as to Somes is hereby reversed and the complaint as to him is dismissed upon the merits, without special finding as to costs.

Torres, J., concurs.

Carson and *Trent, JJ.*, concur in the result.

Judgment modified.

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[84] [No. 7071. January 15, 1913.]

VICTORINO LIM TECO, petitioner and appellee, *vs.* THE INSULAR COLLECTOR OF CUSTOMS, respondent and appellant.

(24 Phil. 84-90.)

1. *International Law; Citizenship; Conflict Between "Jus Soli" and "Jus Sanguinis."*—There is a great difference among the several states as to the citizenship of children born of aliens within the state, some holding to the principle of *jus soli* and some to the principle of *jus sanguinis*.
2. *Id.; Id.; Conflicts, How Avoided.*—Conflicts are generally avoided by the tacit consent of each nation to attempt no exercise of authority over such a person so long as he remains in the other's territory, and to make no objection to the exercise of authority over him by the other while he resides within its limits.
3. *Id.; Id.; Election of Citizenship at Majority.*—As a final solution of the question, practically all sover-

eign states have recognized the principle of the right of election at majority by such a person between the country of his birth and the country of his parents' origin.

4. *Id.; Id.; Election of Citizenship in the United States.*—By the principles governing such right of election as found in legislation and in rulings, of the Department of State of the United States, such a person, if residing in the country of his father's origin upon attaining majority, should exercise his right of election at an early date if he desires to retain his American citizenship, by a prompt return to the United States.

5. *Id.; Id.; Id.; Election, in the Case at Bar.*—Petitioner was born in the Philippine Islands of a Chinese father and Filipina mother and went to China at the age of five, remaining there until his return to the Philippine Islands, five years after attaining majority, and claims the right to enter this country as a citizen thereof. *Held:* Applying the principles of citizenship which govern such cases in the United States (Roa *vs.* Collector of Customs, 23 Phil. Rep., 315), we conclude that the petitioner has lost his right to claim Filipino citizenship by his failure to exercise his right of election within a reasonable time after attaining majority.

Appeal from a judgment of the Court of First Instance of Manila. Crossfield, J.

The facts are stated in the opinion of the court.

Solicitor-General Harvey, for appellant.

Marcelo Cariñgal, for appellee.

[85] TRENT, *J.:*

The admitted facts in this case are these: Victorino Lim Teco was born in Manila November 8, 1885, the legitimate son of Apolonio Lim Teco and Lucia Tiangco. Victorino was sent to China at the age of 5 and remained there until he returned to Manila on the steamer *Yingchow*, October 14, 1910, and sought admission as a citizen of the Philippine Islands. Apolonio Lim Teco, a Christian Chinese, died in Manila on October 22, 1900. His widow Lucia Tiangco is now living in the city of Manila. She was born in the Philippine Islands of a Chinese mestizo father and mother, who were likewise born here. Victorino, his seven brothers and sisters, and his father and mother, were all Christians and members of the Catholic church. His mother has never been outside the Philippine Islands.

Petitioner's right to enter the Philippine Islands as a citizen thereof was passed upon by a board of special inquiry and the board denied his right to enter upon two grounds: (1) Because his father was a subject of the Chinese Emperor on the 11th day of April, 1899, and his nationality followed that of his father; and (2) because the fact that he remained in China some five years after reaching his majority shows that he elected the nationality of that country and abandoned his right, if he had any, to citizenship here. The Court of First Instance of Manila, upon *habeas corpus* proceedings, ordered the petitioner discharged from custody. From this order the Collector of Customs appealed.

In the case of Tranquilino Roa (23 Phil. Rep., 315), we held that persons born of Chinese fathers and Filipina mothers within the Philippine Islands are citizens thereof, with certain well-recognized exceptions as stated in United States *vs.* Wong Kim Ark (169 U. S., 649). If, during minority they are taken to the country of their father's origin, they still remain citizens of the Philippine Islands. But in case the country of their father's origin claims them as citizens under the principle of *jus sanguinis*, such children are then considered as possessing a so-called dual nationality.

[86] The laws of the several States with reference to the status of children born of foreign parents within the State are by no means uniform, and give rise to conflicting claims and

difficulties of all sorts, at the present day when there is a large floating population of aliens in most countries. Some states, as the United States and England, claim all persons as citizens —with the exceptions above noted— born within the state. Others, as Austria-Hungary, Germany, and Switzerland, have adopted the rule that descent alone is the decisive factor, and claim the children of their nationals as citizens wherever born, recognizing the corresponding right of other nations to claim the children of their nationals born within the state. The result of the actual operation of both these rules as they are more or less modified by the different States, has brought forward the principle, recognized either tacitly or by express municipal law by all civilized nations, that a child born of an alien may choose on reaching its majority between the country of its birth and the country of its parents' birth. In the meanwhile, difficulties are generally avoided by the tacit consent of each nation to attempt no exercise of authority over such a person as long as he remains outside of its borders, and to make no objection to the exercise of authority over him by the other while he resides within its limits. (Lawrence, Int. L., par. 94; Taylor, Id., par. 177; Hall, Id., par. 68; Wilson & Tucker, Id., par. 50.) The right of election is recognized in the United States. (Moore, Int. L. Dig., par. 430.) There is no law in the United States regulating the time within which this right of election must be exercised after the child has attained its majority.

It follows from the foregoing that the appellee was a citizen by birth of the Philippine Islands, and that, due to the fact of his foreign parentage, the obligation of election devolved upon him upon attaining his majority. The domicile of his father and after the latter's death that of his mother and his two brothers and one sister who are still living was and has been in the Philippine Islands. Until he became of age, the appellee's legal right to claim a domicile within the [87] Philippine Islands cannot be denied. The question is thus narrowed down to what the appellee did from the date of his majority until he returned to the Philippine Islands in October, 1910, a period of about five years, indicative of his selection of a permanent domicile.

By the Act of 1868, the Congress of the United States definitely declared that expatriation could be accomplished. But until the passage of the Act of March 2, 1907 (34 Stat. at L., 1228) Congress did not provide for any method by which this could be done. It was therefore necessary for the executive and judicial branches of the Government to decide whether expatriation was an accomplishd fact as each individual case was presented. Several principles were gradually settled upon by these departments by which to determine this question with some degree of uniformity, and these principles were given definite and authoritative form by their embodiment in the Act of 1907, *supra*. By section 2 of that Act it is provided that any American expatriates himself by becoming a naturalized citizen of another country, or by taking the oath of allegiance to another country; and that any naturalized citizen of the United States shall be presumed to have expatriated himself by a residence of two years in the state from whence he came or of five years in any other state, this presumption to be overcome by satisfactory evidence. By section 6, all children born outside the United States who are citizens by virtue of their fathers' being citizens of that country must, if they continue to reside outside the United States, indicate their desire to retain their American citizenship at the age of 18, and upon attaining their majority must take the oath of allegiance to the United States. It will be noted

that this last section recognizes the principle of the right of selection. But it does not cover those cases where, as in the case at bar, the child has acquired citizenship by reason of birth within the jurisdiction of the State, and who removes to the country of his fathers' origin during minority.

Such cases do, however, on the one hand bear some resemblance to the case of a naturalized citizen who returns to his [88] native country, and on the other hand to the case of the child born a citizen without the United States. In the first place, the environment of a child up to the age of 5 has little, if any permanent influence upon his subsequent life if taken to another and very different environment. And a child born of an alien father, taken to his father's country at that age, and remaining there until he attains his majority, is, for all practical purposes, as much a resident of the latter country as a native born who has never left it. Little trace of his foreign birth and residence is left upon such a child after a residence of several years in his father's country. He lapses into the manner of the native born as easily and as effectually as his father who sired him during a residence of a number of years in a foreign land. Again, having ceased to regard the country of his birth as his home, he is practically in the same position as an American citizen who has never lived in the United States, and who is referred to in section 6 of the Act of 1907, *supra*.

It follows, therefore, that a child born of alien parents who goes to his father's native land at a tender age and remains there during minority, on becoming of age should, if he desires to retain his Filipino citizenship, indicate that desire by exercising his right of election; and a failure to express such a desire within a reasonable time should be regarded as a strong presumption of his purpose to become definitely identified with the body politic of his father's country. The length of time within which this right must be exercised, as stated above, has never been the subject of legislation. The State Department of the United States has, however, repeatedly held that such election must be made within a reasonable time and is best evidenced by an early return to the country of his birth. In fact, the decisions of the Department of State have gone further and have held almost uniformly that a return to the country of the child's birth at an early date after attaining majority is absolutely essential for him to retain citizenship therein.

"It has further been repeatedly held by us, as you are [89] aware, that when a person thus born in the United States States arrives at 21 in a foreign country, the mode of expressing his election to be a citizen of the United States is by promptly returning to the United States. The same distinction is applied to children born abroad to the citizens of the United States. There is, in both these cases, what is called double allegience; and by the law of nations the nationality of such persons is to be determined by their own election of nationality at their majority, which election is evidenced by placing themselves in the country they elect. Should such persons after electing the United States, and here taking up their domicile, go to France for a transient visit, it will be your duty to protect them as citizens of the United States." (Mr. Bayard, Sec. of State, to Mr. McLane, Min. to France, Feb. 15, 1888, For. Rel. 1888, I, 510, 511.)

It will be noted that the State Department's ruling as to children born abroad to citizens of the United States, in so far as a prompt return to the United States is required, is modified by section 6 of the Act of 1907, *supra*, so that such children may exercise their right of election by taking the oath of allegiance upon attaining

majority, the return to the United States no longer being required. But as no legislation has been promulgated regarding children born within the United States of foreign parents, we must hold that the ruling of the State Department requiring an early return to the country remains, to that extent, unchanged.

Cases could readily be conceived where circumstances prevented the child from returning to the country of his birth immediately after attaining majority, and in such cases, upon a proper showing, the return at an early date would, no doubt, be waived, so far as the exigencies of the case required. No such claims have, however, been made in the case at bar, and the board of special inquiry having found as a fact that the appellee by his conduct had expatriated himself, we cannot entertain the idea that the appellee may, after a residence, under these circumstances, of five years in his father's native country after attaining majority, now [90] elect to become a citizen of the Philippine Islands. He has irrevocably lost that right by his failure to exercise it within a reasonable time after becoming of age. He is no longer a citizen of the Philippine Islands.

The judgment appealed from is reversed and appellee ordered returned to the custody of the Collector of Customs. Without costs.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and *Moreland, JJ.*, concur.

Judgment reversed.

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[170] [No 7671. January 25, 1913.]

JUANA VILLANUEVA ET AL., plaintiffs and appellants, *vs.* HUGO CHAVEZ, administrator of the estate of Gualberto Galve, defendant and appellee.

(24 Phil. 170-178.)

1. *Estates; Administrator Procuring Erroneous Dismissal of a Claim; the Action Against the Administrator.*—In a case where the administrator procures the erroneous dismissal of an action against the estate, the erroneous dismissal of a claim sought to be enforced and the issuance of orders for the distribution of the property and for his own discharge, the order of dismissal must be reversed and the claimant is entitled to proceed against the administrator.
2. *Id.; Debts Must be Paid Before Estate is Distributed.*—It is only after the payment of all existing debts properly due from the estate and not barred by the statute of limitations, or upon their payment being secured as provided by law, that an administrator may lawfully proceed to the distribution of the estate. (Pollock, Admr., *vs.* Buie, 43 Miss., 140, 156; sections 739, 742, 753, 754, Code of Civil Procedure.)

Appeal from an order of the Court of of First Instance of Iloilo. Powell, J.

The facts are stated in the opinion of the court.

C. Lozano, for appellants.

J. M. Arroyo and *A. Horrilleno*, for appellee.

CARSON, *J.*:

This is an appeal from an order of the Court of First Instance of Iloilo dismissing a complaint filed in a separate action incident to the proceedings had in connection with the [171] administration of the estate of Gualberto Galve, deceased, wherein plaintiffs and appellants sought to establish and recover a claim against the estate.

Juana Villanueva et al., plaintiffs and appellants, will be referred to hereinafter as the claimants, and Hugo Chavez, administrator of the estate of Gualberto Galve, deceased, defendant and appellee, will be referred to as the administrator.

Hugo Chavez was appointed as the administrator of the estate of Gualberto Galve, deceased, on the 17th of September, 1910. On the 13th of the following October he entered upon the discharge of his official duties. A com-