

the Philippine Islands by and with the consent of the Commission will appoint none but competent attorneys permanently to occupy the important judicial and legal positions expressly mentioned in section 2 of Act No. 1597.

We do not believe that it was the intention of the legislator to put it in the power of the Attorney-General of the Islands, of the city attorney and the prosecuting attorney for the city of Manila, and of the attorney for the Moro Province arbitrarily, and in the exercise of their unrestrained discretion to confer upon subordinate officers and employees in their offices the right to admission to the bar in these Islands without examination;

and we hold that subordinate officers and employees designated temporarily to perform the duties of absent or disabled assistant attorneys do not hold the positions of such absent or disabled assistant attorneys in the sense in which the legislator contemplated the holding of those positions in section 2 of [494] Act No. 1597, in order to give one who has held them the right to admission to practice law in these Islands without taking the prescribed examination.

The application should be, and is, denied.

Arellano, C. J., Torres, Mapa, Johnson, Moreland, and Trent, JJ., concur. Application denied.

[494] [No. 7256. November 23, 1911.]
BENITO MUÑOZ, petitioner, vs. THE
COLLECTOR OF CUSTOMS, respondent.

(20 Phil. 494-498.)

1. *Citizenship in the Philippine Islands.*—A male person, born in the Philippine Islands of a Filipino mother and a Chinese father, the father being domiciled with his permanent home in the Philippine Islands and subject to the jurisdiction of the Government thereof, is, *prima facie*, a citizen of the Philippine Islands; and the fact that he, at the age of fourteen, went to China and remained there until 1897 when he returned to the Islands where he has since continuously resided, is not in itself sufficient to change his status as a citizen of the Philippine Islands.
2. *Id.; Loss of Citizenship by Continuous Residence Abroad Without Intention to Return.*—The general rule adopted by the State Department of the United States Government, with reference to loss of citizenship by continuous residence abroad, is to the effect that a continuous residence abroad for three years, after the attainment of majority, produces a loss of citizenship, unless it is clearly proved that the *animus revertendi* existed.
3. *Id.; Id.; Intention to Return and Bona Fide Return.*—In the case at bar the intention to return is ad-

mitted, as is also the fact that the return was prevented by circumstances over which the applicant had no control. Under such circumstances, citizenship is not lost when the stay abroad is not prolonged beyond the period shown in this case and where there is, in fact, a bona fide return of the person to his native land with the honest intention to make it his permanent home and country. (*Distinguishing Lorenzo vs. Collector of Customs*, 15 Phil. Rep., 559.)

Original Application for a writ of habeas corpus.

The facts are stated in the opinion of the court.

Hartford Beaumont, for petitioner.
J. W. Ferrier, for respondent.

[495] MORELAND, J.:

This is an application for a writ of habeas corpus presented by Benito Muñoz against the Collector of Customs.

The facts are stipulated and are as follows:

"1. That one Antonio Muñoz Ting Jian Co was born in China about seventy-five years ago; that he came to the Philippines about sixty years ago, and during his minority; that he has lived in the Philippine Islands continuously for the past forty-seven years, and that if he has been absent

at all during any part of the whole period of his residence in said Islands, it has only been for temporary purposes and always with the intention, duly carried out in each instance, of returning shortly to his home in the Philippine Islands; that when the said Antonio Muñoz first came to the Philippine Islands, he obtained from the Spanish Government the required license or permission to reside in the said Islands;

"2. That about fifty years ago the said Antonio Muñoz Ting Jian Co was converted to the Roman Catholic faith, and about the same time he lawfully married a native woman by whom he has had issue;

"3. That he established his domicile in Camalig, Province of Albay, with the intention of residing there; that he has in the course of his residence acquired real and other property; lived in a house of his own, and has been a self-supporting merchant, owning a retail store and having various other investments;

"4. That Antonio Muñoz Ting Jian Co never registered in any public registry, except it be in this, that in the year 1903 or 1904, he did register under Act No. 702, of the Philippine Commission and now holds certificate of residence 348/29537, issued in Albay; that in public documents of various kinds he has uniformly described himself as a resident of the Philippine Islands;

"5. That after the death of the first wife of the said Antonio Muñoz Ting Jian Co he was once more lawfully married, his second wife being one Antonia Nacional, a native of the Philippine Islands; that as a result of this [496] second marriage there was born to the said Antonio Muñoz Ting Jian Co, on the 11th day of January, 1880, in the town of Camalig, Province of Albay, one Benito Muñoz, the petitioner herein;

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"6. That said Benito Muñoz lived in the Philippine Islands with his father until he attained the age of eleven years, when he departed from China, and there remained until January 16, 1911, when he returned to the Philippine Islands in the steamer *Taisang*, and sought admission thereto as a native and citizen thereof;

"7. That before the immigration officers who investigated his rights of entry he presented satisfactory proof that he would have returned sooner to the Philippine Islands had it not been for certain financial difficulties, and that he had never intended to expatriate himself and had never taken any active steps to that end;

"8. That the immigration officers denied the petitioner the right to enter the Philippine Islands solely on the theory that he is an alien of Chinese race who presents none of the required statutory proof that he is a member of the exempt class of Chinese persons;

"9. That petitioner has now exhausted all administrative remedies available to him in his efforts to be declared a citizen and allowed to enter the Philippine Islands as such;

"10. That if, under the facts above set forth, Benito Muñoz is, as a matter of law, a citizen of the Philippine Islands, and if a decision of the board of special inquiry, based on such facts, and correctly determining the issue of fact, may be reviewed by this court, on the theory that there has been an erroneous application of law to the facts by the board, then, upon a determination by this court that there has been such erroneous finding as to the law in the present case, the decision of the court should be rendered in favor of the petitioner; otherwise not."

This court has already held in the case of *United States vs. Go Siaco* (12 Phil. Rep., 490) that a male person born in the Philippine Islands, of a

Filipino mother and a Chinese [497] father, said father being domiciled with his permanent home in the Philippine Islands and subject to the jurisdiction of the government thereof, is, prima facie, a citizen of the Philippine Islands; and the fact that he, at the age of 14, went to China and remained there until 1897 when he returned to the Islands where he has since continuously resided, was not sufficient in itself to change his status as a citizen of the Philippine Islands.

In the case before us the applicant was born in the Philippine Islands of a Chinese father and a Filipino mother in the year 1880. The father lived continuously in the Islands for about sixty years, and acquired considerable real and personal property therein. The applicant lived here until 11 years of age, when he was sent to China, where he remained until January, 1911. On this date he returned to the Islands asserting that he was a native and citizen thereof, and with the bona fide intention of making this his permanent home and country, but was denied entry "solely on the theory that he is an alien of Chinese race who present none of the required statutory proof that he is a member of the exempt class of Chinese persons."

These considerations, taken in connection with paragraph 7 of the stipulation of facts in which it is admitted "that before the immigration officers who investigated his right of entry he presented satisfactory proof that he would have returned sooner to the Philippine Islands had it not been for certain financial difficulties, and that he never intended to expatriate himself and had never taken active steps to that end," bring this case clearly within the decision in the case of *Go Siaco*, above mentioned.

This ruling is not at variance with the recent case of *Lorenzo vs. Collector* 4 P. D.

of Customs (15 Phil. Rep., 559). In that case it appeared that:

"In the present case the applicant left the Philippine Islands when he was about 15 years of age and remained in China until he was 34 years of age. *He says himself that he had no intention of returning to the Philippine [498] Islands until the year before he did return. His mother and his brother say that he married a wife in China. * * * The applicant says that he owned and operated a farm in China; that he was a subject of the Chinese Empire * * *. The applicant testified that he never had any intention of returning to the Philippine Islands until last year.*"

Nor is the decision in conflict with the rules adopted by the Department of State of the United States Government with reference to the loss of citizenship by continued residence abroad. This rule is to the effect that a continued residence abroad for three years, after the attainment of majority, produces a loss of citizenship, unless it is clearly proved that the *animus revertendi* existed. (*Van Dyne on Citizenship*, pp. 276, 277; *In re Bosque*, 1 Phil. Rep., 88.)

In the case before us the intention to return is admitted, as is also the fact that the return was prevented by circumstances over which the applicant had no control. Under such conditions citizenship is not lost where the stay abroad is not prolonged beyond that shown in the case at bar, and when there is, in fact, a bona fide return to the native land with the honest intention to make it his permanent home and country.

The writ is granted and the applicant ordered discharged from custody.

Torres, Mapa, Johnson, Carson, and Trent, JJ., concur.

Writ granted.