

Articles IX, X and XI of the Treaty are intended to guarantee to Spanish subjects remaining in the island, certain rights and privileges.

Article IX guarantees Spanish subjects the right to continue allegiance to the Spanish Crown and still remain in said territory, retain their rights of property and to engage in business, which said rights are to be exercised pursuant to the laws of the country applicable to other foreigners.

Upon the cession of Alsace—Lorraine by France to Germany, this privilege was denied the inhabitants of the province. Those desiring to retain allegiance to France were required to leave the country.

Article X guarantees Spanish subjects the free exercise of their religion.

Article XI guarantees Spanish subjects the right to sue and be sued in the courts of the country, in like manner as citizens.

Said stipulations were not intended to confer special privileges upon Spanish subjects, but to secure them certain rights and privileges enjoyed by other residents by prohibiting their denial to Spanish subjects. The United States Government agreed with the Spanish Government that subjects of Spain residing in said territory should not be discriminated against because of their Spanish citizenship. It was not intended, nor required, nor desired that they should possess any special advantages or immunities by reason of Spanish citizenship. The United States stipulated that as regards property rights they should stand on a footing of equality with other foreigners domiciled in the island.

The property rights of Spanish citizens are subject to such laws as are applied to other foreigners. (Art.IX.)

But in judicial proceedings the rights guaranteed to Spaniards are those enjoyed by the natives. Spanish citizens are subject in matters civil and criminal to the courts of the country and required to pursue the same course as citizens of the

country to which the courts belong. (Art. X.) By citizens is meant inhabitants owing allegiance to the authority maintaining law and order.

Spanish subjects are not exempt from the laws or the jurisdiction of courts by reason of their citizenship. The purpose of the treaty is to make it impossible to refuse such jurisdiction and thereby secure to Spanish subjects the right to appear before the courts of the country, demand and receive a hearing therein on an equal footing with such citizens. Many nations refuse this privilege to aliens. The right to invoke the powers of the court is a privilege essential to the protection of all rights and the Spanish Government very properly desired that its subjects domiciled in the territory surrendered should possess and retain this right. Having the right to invoke the powers of all the courts of the country, they are correlatively bound to respect such powers when invoked by others and the condition upon which the rights guaranteed by the treaty are maintained is, that such rights are subject to the laws of the country; the purpose of the treaty being to prevent the laws of the country from discriminating against Spanish subjects in regard to these matters by reason of their citizenship. The Provisional Court of Porto Rico has been instituted, installed and maintained as one of the courts of that country. Spanish subjects are therefore subject to its jurisdiction the same as other residents in the island in cases wherein the court has jurisdiction of the subject matter. It is maintained pursuant to a law of the country and Spanish residents remaining in said island, or rights arising in said island are subject to the powers of both the law and the court.

My previous communication to you regarding the provisional court was intended to direct your attention to the fact that

Spanish subjects acquired no rights, privileges and immunities because of their citizenship, and that the treaty instead of conferring special privileges, provided that the rights of property and trade accorded other foreigners should not be denied Spanish subjects, while in the courts their rights and privileges are those of natives and not foreigners.

The case in which I sustained your order that the provisional court did not acquire jurisdiction was a criminal case involving a charge of counterfeiting. The accused were arrested under process from an island court. Three of the accused persons claimed to be Spanish citizens and asserted that being such they were foreigners and might demand trial before the provincial court for that reason. In this they were mistaken. AS

regards the courts of Porto Rico, the treaty relegates them to the condition of natives of the island and the order conferring jurisdiction on the provisional court provides that

" cases arising under Article XI of the treaty of peace between the United States and Spain shall be determined as therein provided. "

That is to say, by the courts of the country in which a native or citizen of that country would be tried on a like charge.

Therefore the provisional court did not have jurisdiction in that case and the demand of the Spanish citizens accused was properly refused.

If the case with which we have now to deal is one wherein a native of Porto Rico, being made a co-respondent would be required to respond to the mandate of the Provisional court, it follows that a Spanish citizen must likewise respond to proper service of process, or suffer the consequences of his default.

The fact that a Spanish citizen owns a mortgage on the real estate involved does not prevent the Western Electric Com-

pany from proceeding against the property, nor does the citizenship of the mortgagee divest the Provincial Court of jurisdiction and the Spanish mortgagee has not the right to have the action tried and determined in an island court because he is a citizen of Spain.