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NOTES AND COMMENT

THE RIGHTS OF JAPANESE AND CHINESE ALIENS IN LAND IN WASHINGTON

Here on the Pacific Coast the question of what rights a Japanese or Chinese alien can acquire in real property is of vital importance. A glance into the early law in regards to the rights of aliens in general will serve as an introduction to the problem. The early English common law would not allow an alien to hold land because of the poor policy of permitting the holding of land by one who owed allegiance to another sovereign. This was evaded by a system of uses and trusts. The early American law was the same. Again a system of trusts was used but the Virginia court held in 1832 that equity would not enforce such a trust except as a trust for the benefit of the state.[1] All the courts before whom this problem has been brought have determined likewise.

In Washington the state constitution determines the rights of aliens in the state. It reads as follows:

> "The ownership of lands by aliens, other than those who in good faith have declared their intention to become citi-

[1] *Hubbard v. Goodwin*, 3 Leigh, 492 (1832).

> zens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts, and all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void Provided, that the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purpose of this prohibition."[2]

In 1921 the legislature of the State of Washington passed what was known as the Alien Land Bill.[3] This act provides that no alien who has not declared his intention of becoming a citizen, can hold or take land. Land conveyed to an alien is to be forfeited to the state. The act includes as "land" any interest therein for more than ten years. Also any alien taking land under a mortgage or in the collection of a debt cannot hold it for more than twelve years. As a Japanese or Chinese cannot become a citizen under the United States Code,[4] limiting citizenship to "whites and negroes," this act necessarily excludes them from taking or holding land.

In *Terrace et al. v. Thompson*,[5] the constitutionality of the act was questioned, especially in regards to an alleged conflict with Article 1 of the Treaty with Japan[6] which provided that citizens of each contracting party "shall have liberty to own or lease and occupy homes, manufacturies, warehouses and shops, to lease land for residential and commercial purposes and generally to do anything incident to or necessary for trade." The court upheld the act on the ground that this treaty did not give the right to lease agricultural lands as it was not incidental to trading purposes. This decision was later upheld by the Supreme Court of the United States.[7]

In *State v. O'Connell*,[8] it was sought to evade the statute by means of a trust agreement under which O'Connell did not have the use of the land, but had the right to the rents and profits and any increase in value on resale. The statute in express terms only prohibits conveyances for the use of aliens. However, the court would not countenance such an evasion and held the land would escheat to the state. This would appear to be in harmony with such attempts at evasion of the common law.

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[2] WASH. CONST., Art. II, Sec. 33.
[3] Laws of '21, Chap. 50, p. 156. Rem. Comp. Stat., Sec. 10581
[4] U. S. Comp Stat. Sec. 4358.
[5] 274 Fed. 841 (1921).
[6] 37 Statutes at Large 1504.
[7] *Terrace v. Thompson*, 263 U. S. 197, 68 L. Ed. 255. 44 Sup. Ct. 15 (1923)
[8] 121 Wash. 542, 209 Pac. 865 (1922).

In *State v. Kurita,*[9] a transaction consumated shortly before the act was passed, was attacked under the act. In that case Kurita had a contract to purchase some agricultural lands. Being unable to meet payments, he assigned his contract to a corporation, which in turn assigned to a second corporation. Kurita received in turn a mortgage on the land. He was also a lessee of the second corporation. The court concluded that Kurita was not the owner and the corporations merely dummies, but that the whole transaction was made in good faith and could not be attacked by the state, and that such cases must be determined on their individual facts. The "twin case" to this, decided on the same day, is *State v. Kusumi.*[10] On similar facts the court reached the same conclusion.

The forerunner of the first "loophole" in the act was *In re Fujimoto,*[11] which held that a Japanese minor who was a citizen of the United States by birth could not have his parents appointed his guardians so as to control his property The argument of the court was that a guardian has practically the same control over, and use of, his ward's property as he would of his own. The California court construing laws practically identical to our own, reached the opposite conclusion in *In re Tetsubumi Yano's Estate.*[12] That court's argument was that a guardian "neither acquires, possesses, or enjoys the property belonging to his ward, in any accurate or legal meaning of these terms." The Washington court critizes the "academic" viewpoint as a detriment to the practical operation of the act. Although the decision of the Washington court seems the more practical of the two, it also seems to be a case of "judicial legislation."

This "loophole" culminated in *State v. Kosai.*[13] In this case title was taken in the name of the Japanese child, who was a citizen of the United States by birth. Originally title was held in the name of his parents, but on passing of the Japanese Land Bill they conveyed the title as a gift to their son. Then trustees, who were citizens of the United States, were appointed. Under the agreement the trustees were to receive a small compensation for acting as such, and they, in turn, hired the child's parents to run a dairy farm on the land. The court were of the opinion that the evidence showed that bad faith and fraud were not present in this case and held the trust was in favor of the child and not the parents. In answer to the argument that this would allow many aliens to evade the law they replied that each case must depend on its individual facts. But it would seem that, if the court could not find fraud in this case, they will not be able to find fraud in any similar case and the statute may be evaded in this manner with impunity

The next "loophole" in the act was found in the case of *State v.*

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[9] 136 Wash. 426, 240 Pac. 554 (1925).
[10] 136 Wash. 432, 240 Pac. 556 (1925).
[11] 130 Wash. 188, 226 Pac. 505, 39 A. L. R. 937 (1924).
[12] 188 Cal. 645, 206 Pac. 995 (1922).
[13] 133 Wash. 442, 234 Pac. 5 (1925).

Natsuhara,[14] in which the state sought to escheat a leasehold interest in real estate owned by a Japanese. The lease had been entered into about five years before the passage of the act and was to extend about five years after its passage. The question was whether the act would apply to such an interest. The court held it would not, saying

> "There is another reason why the construction contended for by the state should not be given, if the act is reasonably susceptible of being construed as not to apply to prior valid leases. If it should be given a construction as applying to such leases, its constitutionality in this regard would be a grave question. It would mean that property lawfully acquire might, by act of the legislature subsequently passed, be taken from the lawful owner and given to the state without compensation."

It was then argued that this taking of property might be justified under the police power, but, as the court pointed out, an exercise of the police power may depreciate the value of land, but no cases have held that it will justify the taking of valuable property legally acquired and giving it to the state without compensation.

The last "loophole" is brought out by *State v McGonigle.*[15] The defendant was charged with a conspiracy to violate the alien land law The legal title to the land stood in the name of McGonigle. Namba, a Japanese, had lived on the land and farmed it. The Japanese raised and sold garden truck, giving receipts signed by McGonigle. The court held that there was not prima facie evidence of a conspiracy here, and on its face it seemed merely a hiring by McGonigle to reside and till the soil and sell the produce.

This exception has been carried much further in California. In the case of *Ex parte Okahara,*[16] the facts were very similar to the preceding Washington case, but there a contract was entered into. The contract was termed a "contract of employment." The owner of the land was termed "the employer" and Okahara "the contractor." The "contractor" was to clear the land and plant property to orchard, all trees being furnished by "employer." The "contractor" agreed to plant berry bushes between the trees, and also some garden truck. The "employer" was to sell the crops and the "contractor" was to receive 50 per cent of the net proceeds derived from sale of said products. The "contract" further provided that "all crops shall belong to, and be the property of the employer", that the sole right of the "contractor" shall be to the compensation to be paid by the "employer." The contract also provided that the "employer" might terminate the "contract" at

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[14] 136 Wash. 437, 240 Pac. 557 (1925).
[15] 144 Wash. 252, 253 Pac. 655 (1927).
[16] 191 Cal. 353, 216 Pac. 614 (1923).

any time he was dissatisfied. The court held that this could not be the basis for a criminal prosecution. They said.

> "It is true, as suggested by counsel for the state, that the character of an instrument depends upon the intention of the parties as disclosed by the language used to express the intention of the parties and not by a particular name given it by them. But it is also true that we are not permitted to make the instrument before us the basis of a criminal action even though we may be able to concur in the suggestion that it was artfully and adroitly drawn for the purpose of avoiding a conflict with a penal statute of the state."

Further, they said,

> " the instrument before us cannot be characterized as a lease or transfer of any interest in property because it lacks many of the essential elements of a lease, while on the other hand it bears all the characteristics of an agreement of hiring."

In conclusion, it would seem that if the intention of the legislature in the act was to keep the agricultural land of the state in the hands of citizens, that the act has failed. Through technicalities and construction the courts have to a large extent "taken the teeth out of the act." JACK D. FREEMAN.

INJUNCTIONS TO RESTRAIN THREATENED OR IMPENDING CRIMINAL PROSECUTIONS

The general rule is always stated to be that an injunction will not be granted to stay criminal or quasi-criminal proceedings.[1] The original basis of the rule, it is quite generally agreed, was founded upon the theory that to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offenses would constitute an invasion of the law courts.[2] This theory was the natural outgrowth of the lack of relation between equity and law courts as they formerly existed in England.[3] With the gradual ebb in the jealousies and antagonisms between courts of law and of

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[1] *Dalton Adding Machine Co. v. Va. State Corp. Comm.*, 236 U. S. 699, 37 Sup. Ct. 480, 59 L. Ed. 797 (1914) *Standard Oil Co. of N. J. v. City of Charlottesville*, 42 Fed. (2nd) 88 (1930) 32 C. J. 279; 14 R. C. L. 426.

[2] *Littleton v. Burgess*, 14 Wyo. 173, 82 Pac. 864 (1905) Pomeroy Equitable Remedies (2nd Ed.), Sec. 2065, Clark, Equity (3rd Ed.), Sec. 245.

[3] *Huntworth v. Tanner* 87 Wash. 670, 152 Pac. 523 (1915) In *Holderstaffe v. Saunders*, 6 Mod. 12, Holt, Ch. J., said, "surely chancery will not grant an injunction in a criminal matter under examination in this court, and if they did this court would break it and protect any that would proceed in contempt of it."