WAR RELOCATION AUTHORITY
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To: The Director

Subject: Effect of Alien Land Laws on the Acquisition and Possession of Real Property by Persons of Japanese Ancestry; the Alien Land Laws of California.

Members of the administrative staff have, from time to time, asked questions about the effect of the Alien Land Laws of the several States on the acquisition and possession of real property by aliens of Japanese ancestry. The escheat cases which have recently been filed in the courts of the West Coast States have raised numerous questions with respect to these laws. This memorandum discusses the general character of the restrictions in the Alien Land Laws of the several States and gives a detailed analysis of the Alien Land Law of California. Memoranda on the Alien Land Laws of the States of Washington and Oregon will be issued within the near future.

Character of Alien Land Law Prohibitions

At common law, an alien could take real property "by act of the parties" (by purchase, gift, devise), but could not take real property "by operation of law" (by descent). After he acquired the property "by act of the parties", however, the alien's rights were subject to forfeiture by the sovereign, but only through appropriate proceedings called "inquest of office" or "office found". The defect of alienage could not be relied upon by third persons to question his title and until proceedings for forfeiture were had, the alien could convey or devise the property. For discussion see Dutton v. Donahue, 44 Wyo. 52, 8 P. (2d) 90 (1932); Webb v. O'Brien, 263 U. S. 313 (1923).

Legislation has been enacted in all jurisdictions in the United States modifying in varying degrees the common law rules on the ownership of real property by aliens. The tendency of most of this legislation has been toward giving aliens the same rights as citizens with respect to the ownership of real property. However, laws have been adopted by several Western States forbidding the ownership of real property interests by aliens ineligible for United States citizenship, beginning with California in 1913. These restrictive laws are popularly referred to as "Alien Land Laws".

The Alien Land Laws adopted by most of the Western States after 1913 prohibit the acquisition and possession of real property, or certain kinds of real property, by aliens who are not eligible to become citizens of the United States. The laws provide for the forfeiture to the State of lands acquired by aliens ineligible for citizenship in much the same manner as lands belonging to aliens could be forfeited at common law. Japanese aliens (except in rare instances) are not eligible for naturalization under the laws of the United States (8 U.S.C. 703) and are, therefore, subject to the restrictions in these Alien Land Laws.

The several States can define the rights of aliens with respect to the ownership of real property, except that they are limited to some extent by the treaty power of the Federal Government. They may not impose restrictions on land ownership in violation of any treaty. It is fundamental that in case of conflict between a treaty on a proper subject and a State statute or constitution, the treaty prevails. It is also a well-accepted rule that a definition of the property rights of citizens or subjects of a nation which enters into a treaty with the United States is a proper subject for the exercise of the treaty power. Most of the laws of the several Western States restricting the rights of aliens ineligible for citizenship to acquire and possess real property take into account the treaty power of the Federal Government and provide that the restrictions which they prescribe are subject to the rights guaranteed to such aliens by treaties made by the United States.

In 1911, the United States and Japan entered into a treaty of commerce and navigation, defining the rights of citizens of each of the contracting parties while residing within the alien country. (37 Stat. 1504.) Article I of the treaty, which contained the provisions respecting property rights, was, in part, as follows:

> "The citizens or subjects of each of the High Contracting Parties shall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established."

The clauses authorizing the citizens of each contracting party "to own or lease and occupy houses, manufactories, warehouses and shops, . . . to lease land for residential and commercial purposes," were the only provisions in the treaty giving subjects of Japan the privilege of acquiring any interests in real property in the United States. These provisions in the treaty have been held not to confer the privilege of acquiring land for agricultural

purposes. Terrace v. Thompson, 263 U. S. 197 (1923). This has permitted the Western States to enact legislation preventing the acquisition of interests in agricultural lands by Japanese nationals. The treaty conferred the right, however, to lease land for some activities closely related to agriculture. In the case of Yoshida v. Security Insurance Company, 26 P. (2d) 1082, 145 Oregon 325 (1933), the Oregon Court held that a subject of Japan was entitled under the treaty to lease land for the purpose of feeding and raising hogs. The Court took the position that the feeding operations constituted trade and commerce rather than agriculture. This seems to be the only case in which any court has construed the provisions of the treaty to protect activities closely related to agriculture. Cases which confirm the right under the treaty to lease land for commercial purposes are State v. Tagami, 195 Cal. 522, 234 Pac. 102 (1925), (lease of land for sanitarium) and Jordan v. Tashiro, 278 U. S. 123 (1928), (lease of land for hospital).

It is clear that the treaty between the United States and Japan authorized subjects of Japan, while residing in the United States, to own or lease buildings, including houses, manufactories, warehouses and shops. Whether or not they could own the land upon which such buildings were situated is not clear, however. No court has passed upon the precise question. In the United States it is, of course, customary, when speaking of the ownership of houses, warehouses and factories, to refer to such ownership as including the land as well as the buildings. It is, in fact, unusual for a person to own a home, for instance, without owning the land on which it is situated. However, it seems unlikely that the treaty was intended to provide for the ownership of any lands, whether agricultural or otherwise. The express provision authorizing aliens to lease land for residential and commercial purposes followed a provision authorizing them to own and lease houses, manufactories, etc. The clause authorizing aliens to lease land for residential and commercial purposes would have been superfluous, if the right to lease and own houses, manufactories, etc., had been intended to include the owning and leasing of the land on which they were situated. In Terrace v. Thompson, supra, the court indicated that the historical background of the negotiations between the United States and Japan indicated that the treaty was not intended to confer the right to own any land whatever, as follows:

> "But, if the language left the meaning of its provisions doubtful or obscure, the circumstances of the making of the treaty, as set forth in the opinion of the District Court (supra, 844, 845), would resolve all doubts against the appellant's contention. The letter of Secretary of State Bryan to Viscount Chinda, July 16, 1913, shows that, in accordance with the desire of Japan, the right to own land was not conferred. And it appears that the right to lease land for other than residential and commercial purposes was deliberately withheld. * * *"

This language of the Supreme Court indicates that if the precise question were before the court, it would probably construe the treaty to have granted only the privilege of owning residential and commercial buildings but not the privilege of owning the real property on which they were situated.

The treaty of 1911 with Japan was terminated on January 26, 1940, the six months' notice of termination having been given on July 26, 1939. (House Document 339, 78th Congress, volume 2, page 189, "Papers Relating to the Foreign Relations of the United States, Japan, 1931-1941".) There is no treaty in effect at this time respecting the ownership of real property by Japanese nationals in this country. However, as discussed below with respect to the California law, the Alien Land Laws of some of the Western States may still be affected by the Treaty of 1911, since some of the laws apparently by reference incorporate the treaty.

The constitutionality of the Alien Land Laws of California and Washington has been upheld in several cases which have gone to the United States Supreme Court. Frick v. Webb, 263 U. S. 326 (1923); Webb v. O'Brien, 263 U. S. 313 (1923); Porterfield v. Webb, 263 U. S. 225 (1923); Ex Parte Akado, 207 Pac. 245, 188 Cal. 739 (1922); Terrace v. Thompson, 263 U. S. 197 (1923); White River Gardens, Inc. v. State, 277 U. S. 572 (1928). The Alien Land Laws of most of the Western States follow the pattern of the Washington and California laws.

While an Alien Land Law may be effective after its enactment to prevent the acquisition of land in the State by an alien, it does not affect his right to hold land which he owned at the time the restrictive law was enacted. The Fourteenth Amendment of the Constitution provides, in part, that no State shall "deprive any person of life, liberty or property without due process of law". Enacting a law providing for the escheatment of property which had already been legally acquired by an alien would clearly violate this constitutional provision. Most of the State laws which have been enacted contained provisions making them inapplicable to property owned by aliens who came within the law at the time it was enacted.

The Alien Land Laws do not purport to restrict the right of United States citizens of Japanese ancestry to own real property. United States citizens of Japanese ancestry may own real property under precisely the same conditions and in the same manner as other citizens.

California Alien Land Laws

The first law of California restricting the ownership of real property by aliens became effective August 10, 1913 (Statutes of California, 1913, c. 11[illegible] p. 206). Prior to the enactment of this law, aliens in California of all class[illegible] could take, hold and dispose of real property in the same manner as citizens.

(See Civil Code of California, Sec. 671.) The 1913 Act was followed by the Initiative Act of 1920 (Statutes of California, 1921, page lxxxiii), which became effective December 9, 1920, and which was amended in 1923 (op. cit., 1923, c. 441, p. 1020), 1927 (op. cit., c. 528, p. 881), and again in 1943 (op. cit., 1943, c. 1059, p. 2999).

As pointed out above the Alien Land Laws cannot take away the rights of aliens in real property acquired before the laws were enacted, since the Fourteenth Amendment to the Constitution forbids the States to deprive persons of property without due process of law. Likewise, an amendment to an Alien Land Law cannot make illegal the continued ownership of land if the ownership was valid at the time the amendment was enacted. The law in effect on the date of the alien's acquisition of an interest in real property is usually determinative of his legal rights. In determining an alien's rights in a particular piece of property, it is, therefore, important to know the provisions of the law at the time it was acquired. The important provisions of the California law and each significant amendment to it are summarized below. The 1913 and the 1920 Acts are summarized separately. The 1923 and 1927 amendments are mentioned in the summary of the 1920 Act. The 1943 amendments to the 1920 Act are summarized separately.

The Act of 1913

The important provisions of the Act of 1913 restricting the right of aliens ineligible for citizenship to acquire and hold land in the State of California are here briefly summarized by sections.

Section 1. Aliens eligible for citizenship were given the same rights with respect to real property as citizens of the United States.

Section 2. All aliens other than those mentioned in Section 1 (i.e., aliens ineligible for citizenship) were given the right to acquire, possess, enjoy and transfer real property or any interest therein only to the extent allowed by any treaty existing between the Government of the United States and the country of which such alien was a subject. In addition, such aliens were given the right to lease lands for agricultural purposes for a term not exceeding three years. This right to lease lands for agricultural purposes was independent of the rights conferred by existing treaties.

Although the Treaty of 1911 between the United States and Japan, defining the rights of Japanese nationals in this country to acquire and possess real property interests, has been terminated, the prohibitions in the California law are probably still limited by it. Section 2 permitted the acquisition and transfer of real property to the extent allowed by any

treaty "now existing". This statute incorporates, as a part of it, the treaties which were in effect at the time the law was enacted. The language "now existing" indicates that the legislative policy was determined in the light of treaties then in effect. It indicates that the legislature intended that the restrictions in the law should be limited by those treaties and that the legislature did not intend that the restrictions would be absolute, should the treaties be terminated. The effect of the termination of the Treaty of 1911 on the Alien Land Law of California, however, has not yet been passed upon by the courts.

The language of Section 2 referring to treaties "now existing" was included in the 1920 initiative Act and a 1923 amendment thereto. The 1927 and 1943 amendments did not change or re-enact the section. The 1923 amendment was the last enactment of this section.

Section 3. Companies, associations or corporations, the majority of the members of which were ineligible aliens or the majority of the shares of the capital stock of which was owned by such aliens, were given the right to acquire, possess, etc., real property or any interest therein only to the extent provided by treaty. Corporations in that category, however, were allowed to lease land for agricultural purposes for a term not exceeding three years. This section also uses the language "now existing" with reference to treaties.

Section 4. Whenever in probate proceedings one prohibited by the Act from owning real property was an heir or devisee, the court was required to order a sale of such real property and distribute the proceeds to the alien in lieu of the real property.

Section 5. This section provided for escheat to the State of real property acquired or held in violation of the Act and designated the Attorney General as the officer to institute such escheat proceedings. Title was declared to pass to the State upon entry of final judgment in the escheat proceedings. Real property acquired in the enforcement or satisfaction of a lien then existing was excepted from the provisions of the section and of Sections 2 and 3, as long as it remained the property of the alien or the company, association or corporation acquiring the same in such manner.

Section 6. This section provided for escheat of leaseholds and other interests in real property less than a fee acquired in violation of the Act. The Attorney General was given the responsibility of enforcement. Escheat was accomplished by the court's determining the value of the leasehold or other interest, entering a judgment for the value of the interest, and having the property sold. The amount of the judgment was then paid to the State and the balance distributed in accordance with the interests of the parties.

Section 7. This section recited that the Act was not a limitation on the power of the State to enact other laws with respect to the holding or disposal by aliens of real property.

Section 8. All other Acts and parts of Acts in conflict with this one were repealed.

The Act of 1920, as Amended by Acts of 1923 and 1927

Several significant changes in the Alien Land Law of California were made by the Alien Property Initiative Act of 1920 and by subsequent amendments by the legislature in 1923 and 1927. These changes were intended to plug the loopholes in the 1913 Act and to make the restrictions more severe. They included a provision intended to prevent aliens from holding real property in the names of their minor children. They provided for the escheat of property wrongfully acquired as of the date it was acquired. They also added restrictive provisions with respect to cropping contracts, prohibited leases for any term, tightened up the regulations on the corporate entity and trust arrangements to prevent their use to evade the Act, and placed restrictions upon the use of mortgages and other liens to prevent their use for evading the law. Also, the 1920 law, as amended, imposed criminal penalties for conspiracy to violate it. Provisions respecting prima facie presumptions of an intent to evade the law were added to facilitate prosecution of escheat proceedings. The several sections are briefly summarized here.

Section 1 was in language similar to the 1913 Act.

Section 2 followed closely the language of Section 2 of the 1913 Act, except that it omitted the clause permitting aliens ineligible for citizenship to lease lands for three year periods for agricultural purposes. By this omission, the leasing of lands for agricultural purposes became prohibited.

Section 3 omitted the provision in Section 3 of the 1913 Act allowing leases of agricultural lands for not to exceed three years by companies, associations or corporations controlled by ineligible aliens. Section 3 added a provision that, thereafter, ineligible aliens could only become members of or acquire shares of stock in any company, association or corporation authorized to acquire, possess, etc., real property or any interest therein in the manner and to the extent and for the purposes prescribed by treaty, and not otherwise. This was more restrictive than Section 3 of the 1913 Act, which merely prevented companies, associations or corporations controlled by ineligible aliens from acquiring, possessing, etc., agricultural lands.

Section 4 of the Act of 1920 was entirely new. Its obvious purpose was to prevent ineligible aliens from enjoying the benefits of real property ownership as guardians of their citizen children. It prohibited aliens and

corporations, associations or companies in the ineligible category from being appointed guardians of that portion of minor estates which such aliens or corporations, etc., could not properly own or enjoy under the Act. It further provided that in such cases the public administrator or other competent person or corporation could be appointed guardian in place of the ineligible persons. This section was at least partially nullified by judicial decision in the case of Tetsubumi Yano's Estate, which is discussed below.

Section 5 of the Act of 1920 was also entirely new. It provided the State a means of keeping track of real property held by guardians, trustees or agents for ineligible aliens or minor children of ineligible aliens. It provided that such "trustees" must, on or before the 31st day of January of each year, file a verified report with the Secretary of State and with the county clerk of each county in which any of the property was situated, showing:

1. Property, real or personal, held by the trustee for an alien or minor.

2. Date when each item of such property came into his possession or control.

3. All expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in respect to land and the handling or sale of the products thereof. Any person violating any provision of the section was declared guilty of a misdemeanor and subject to a punishment by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding one year, or both.

Section 6 of the Act of 1920 corresponded to Section 4 of the Act of 1913, which required probate courts to order real property and interests therein to be sold whenever an ineligible alien became entitled to them by inheritance or devise. The proceeds were distributed to the alien. It added memberships or shares in companies, associations, or corporations owning real property to the types of property which probate courts were required to order sold under this section.

Section 7 of the Act of 1920 provided for escheat under substantially the same procedure as Section 5 of the Act of 1913. However, an amendment of June 20, 1923 changed the time of escheat to the date of wrongful acquisition from the date of the entry of a judgment of escheat, and provided that title should pass to the State on final judgment as of the date of such acquisition. A problem raised by this change is discussed below. This section also made th

District Attorney of the county in which the property was located, in addition to the Attorney General, an official designated to institute escheat proceedings. It also changed Section 5 of the Act of 1913 by providing that no alien, company, association or corporation of the ineligible class could hold for a longer period than two years any agricultural land acquired in the enforcement or satisfaction of a lien.

Section 8 of the Act of 1920 made a few changes and additions to the provisions in Section 6 of the Act of 1913, which provided for escheat of interests in land less than a fee. It provided for the institution of escheat proceedings by the District Attorney as well as the Attorney General. It also provided that the judgment entered in the escheat proceedings constituted a lien against the property in which leasehold or other interests less than a fee were acquired. It further provided that shares of stock or membership interests in ineligible companies, associations or corporations acquired in violation of the Act should escheat to the State as of the date of acquisition and specifically declared that any such share or membership interest was an interest in real property. By amendment of June 20, 1923, this section declared cropping contracts to constitute an interest in real property. Cropping contracts thereby fell within the prohibitions of the law.

Section 9 of the Act of 1920 provided that every transfer of real property or an interest therein, if made to evade the law or avoid escheat, shall be void and the interests sought to be conveyed shall escheat as of the date of such transfer. This section also created a prima facie presumption that a conveyance was made with intent to prevent or avoid escheat upon proof of any one of the following facts:

a. That the property was taken in the name of another but the consideration was paid or agreed or understood to be paid by an ineligible alien.

b. That the property was taken in the name of a company, association or corporation in which memberships or shares held by ineligible aliens together with memberships or shares held by others, but paid for or agreed or understood to be paid for by such aliens, amounted to a majority of the memberships or shares of such company, association or corporation.

c. That a mortgage was executed in favor of an ineligible alien and the mortgagee was given possession, control or management of the property.

This section was interpreted by the California Supreme Court in the case of People v. Fugita, which is discussed below.

Section 9a was added to the Act by an amendment of May 16, 1927. It provided that when the State alleged in an indictment or information that the defendant was an alien and ineligible for United States citizenship and established by evidence the acquisition, possession, enjoyment, use, cultivation, occupation or transferring of real property or an interest therein, the burden of proof was shifted to the defendant to prove that he was a citizen or was eligible for citizenship. The section did not require the State to offer evidence that the defendant was of a race ineligible for citizenship. Section 9a was held unconstitutional by the Supreme Court of the United States in Morrison v. California, which is discussed below.

Section 9b was also added by an amendment on May 16, 1927. It provided that when it was proved that the defendant in a case arising under the law had been in the use or occupation of real property and when it has also been proved that he was a member of a race ineligible for citizenship, there should be a prima facie presumption that the defendant himself was ineligible for citizenship. This cast upon the defendant the burden of proving citizenship or eligibility for citizenship as a defense. The Supreme Court of the United States has sustained this section in Morrison v. California, discussed below.

Section 10 of the Act of 1920 provided that if two or more persons conspire to violate any of the provisions of the Act, they are punishable by imprisonment in the county jail or State penitentiary not exceeding two years or by fine not exceeding $5,000, or both. An amendment adopted in 1943 amended this section and imposed more severe penalties.

Discussion of Act of 1920, as Amended by the Acts of 1923 and 1927

Had all of the provisions of the Act of 1920 and the amendments of 1923 and 1927 been upheld by the courts, the purposes of the Alien Land Law would have been much more effectively accomplished. However, there have been several court decisions which have held invalid some of the sections of these laws and have raised serious questions with respect to the interpretation of other sections.

1. Probably the most serious loophole which the Act of 1920 and its amendments were intended to close was the one which permitted aliens to purchase land, place title to it in their minor children and thereby enjoy the benefits of land ownership. Section 4 of the new Act was designed to remedy this situation. It prohibited ineligible aliens and ineligible corporations from being appointed guardians of the estates of minors. The Supreme Court of California, however, largely nullified Section 4 by its decision in Tetsubumi Yano's Estate, 188 Cal. 645, 206 Pac. 995 (1922). In this case, the court held the section unconstitutional, in so far as it denied an alien the right

to be appointed guardian of the estate of his minor citizen child, even though the estate consisted of agricultural land paid for by the alien, and even though the guardianship was primarily for the purpose of evading the law. The court held that disqualifying an alien to be appointed guardian of the estate of his citizen child would deny the alien equal protection of the laws and the citizen child equal privileges and immunities, guaranteed by the Fourteenth Amendment to the Constitution of the United States.

2. As pointed out above, Section 9 of the Act of 1920 provided that there should be a prima facie presumption that land was acquired in violation of the Act where the conveyance was made to a citizen and where the consideration was paid by an ineligible alien. In People v. Fugita, et. al., 215 Cal. 166, 8 P. (2d) 1011 (1932), the Supreme Court of California held that the prima facie presumption was rebuttable and that it had been successfully overcome by showing that the alien had made an outright gift of the land to his children and had at all times disclaimed any interest in the land other than as guardian for his children. Although the alien had moved onto the land and cultivated and managed it, the court said this did not deplete the children's estate as long as his occupancy was in subordination to their claim and title. The court held that the land could not be escheated to the State under these conditions. Under this decision, aliens could enjoy many of the benefits of land ownership and proof that they occupied the land unlawfully was very difficult. This decision and the Yano decision may have influenced the legislature to insert in the 1943 amendment strict requirements on reports by alien guardians and severe criminal penalties for violations of the Alien Land Law.

3. Section 7 of the 1920 Act has raised a very troublesome problem, which has not yet been settled by the courts. It provided that escheat of property wrongfully acquired should take place as of the date of such acquiring, and that title should pass to the State on entry of final judgment in the escheat proceeding as of the date of such acquisition. This change from the 1913 Act, which simply provided that the escheat should be effective on entry of final judgment, was obviously intended to discourage conveyances to ineligible aliens who could, under the Act of 1913, hold the land so conveyed with complete impunity as against everyone but the State and at any time prior to the institution of an action by the State for escheat could convey a good title to anyone eligible to hold title. Thus, an alien could, especially in the absence of vigorous enforcement of the law by the State, purchase land and enjoy the benefits thereof for many years, and if escheat proceedings seem to threaten, could then sell the property and avoid escheat.

This section is especially important because of its effect upon the title to land which has passed through the hands of an ineligible alien since the enactment of the section. If the courts should hold that escheat

relates back by force of the statute to the date on which the ineligible alien wrongfully acquired title, it is highly improbable that the title companies would guarantee titles where a conveyance by an ineligible alien to an eligible purchaser was in the chain of title, even though the conveyance was made prior to the institution of escheat proceedings. Purchasers would also be reluctant to buy property, the title to which had at any time since 1923 been in an ineligible alien. In fact, it is conceivable that the title insurance companies would refuse to insure the title to any land which had at any time since 1923 been owned by any person of Japanese ancestry, citizen or alien alike, because of the possibility that the alien or citizen had held the land in violation of the law.

The case of Mott v. Cline, 200 Cal. 434, 253 Pac. 718 (1927) passed upon this question in a case in which the California law, prior to the adoption of the 1923 amendment, was applicable. In that case a subject of China held a lease on certain farm lands with an option to purchase at the end of the term. The lease was made before the enactment of the Alien Land Law of 1913 and ran for a term of 10 years. A few months prior to the termination, but after the alien land law went into effect, the lessee assigned the lease and option to a Caucasian who was eligible to own agricultural lands. The lessor contested the assignment on the ground that the owner of the option (the ineligible alien), not being able to lawfully exercise it on his own behalf after the passage of the alien land laws, did not have an assignable interest.

The State was not a party to the action and was not asserting any rights it might have had. The questions before the court were whether or not a party other than the State could properly raise the issue of wrongful acquisition by the alien and whether the alien could convey the interest which he held. The court decided that the ineligible alien had rightfully acquired his interest in the first place, and, even though the change in the law would not allow him to exercise the option, he could nevertheless execute a valid transfer of the right. And, in any event, the person who gave him the option could not defeat the transfer on the ground that it was in violation of the Alien Land Law, since only the State could raise that issue. Other cases holding that only the State may challenge the title of an alien or otherwise raise the issue of violation of the Alien Land Law are Suwa v. Johnson, 203 Pac. 414, 54 Cal. App. 786 (1921); Shiba v. Chikuda, 7 P. (2d) 1011, 214 Cal. 786 (1932); Gonzales v. Ito, 55 P. (2d) 262, 12 Cal. App. (2d) 124 (1936).

A clause in the 1943 amendment to Section 8 of the Act apparently was intended to except from escheat proceedings interests in land less than a fee purchased from ineligible aliens by persons eligible to own such interests. The clause reads:

> "The provisions of this section shall not operate to divest any bona fide interest of any person, firm, corporation or association which is acquired in good faith and for value and not in violation of this Act, prior to the filing of a notice of lis pendens in connection with an action for escheat under the provisions of this Act."

Since the clause refers only to "this section" which is the amended Section 8 of the Act of 1920, it merely covers escheat of leaseholds and other interests in real property less than a fee. It, therefore, fails to provide a similar exception with respect to Section 7.

4. Section 9a provided that when the State alleged in an indictment or information that the defendant was an alien and ineligible for United States citizenship and established by evidence the acquisition, etc., of real property or an interest therein, the burden was shifted to the defendant to prove that he was a citizen or was eligible for citizenship. The section did not require the State to offer evidence that the defendant was of a race eligible for citizenship. The Supreme Court of the United States, in Morrison v. California, 291 U. S. 82 (1934), held this section invalid. The court, in giving the reasons why the section was invalid, said that, "to prove . . . possession and nothing more is hardly a step forward in support of an indictment", and that no probability of wrong doing grows out of the naked fact of possession. "For a transfer of the burden, experience must teach that the evidence held to be inculpatory has at least a sinister significance, or if this at times be lacking, there must be in any event a manifest disparity in convenience of proof and opportunity for knowledge . . ." The court also said that, "what is proved must be so related to what is inferred in the case of a true presumption as to be at least a warning signal against the teachings of experience".

Section 9b provided that when it had been proved that the defendant in a case had been in the use or occupation of real property and when it had also been proved that he was a member of a race ineligible for citizenship, there should be a prima facie presumption that the defendant was ineligible for citizenship and the defendant should have the burden of proving citizenship as a defense. The Supreme Court sustained this section, pointing out that the defendant could prove a claim of citizenship without difficulty if his claim was honest, whereas the State would be relatively helpless if forced to disprove a claim of United States citizenship. The court held that "upon a balancing of convenience or of opportunities for knowledge, the shifting of the burden will be found to be an aid to the accuser without subjecting the accused to hardship or oppression". See Morrison v. California, 125 Cal. App. 282, 13 P. (2d) 800 (1932), appeal dismissed, 288 U. S. 591 (1932). For comparison of sections 9a and 9b, see Morrison v. California, 291 U. S. 82 (1934).

Amendment of 1943

The legislature of California again amended its Alien Land Law in 1943. The amendment was intended to strengthen the hands of the law enforcement agencies still further, especially with respect to the sections which had been held invalid by court decisions.

A new Section 4 was substituted for Section 4 of the Act of 1920. The new section recognized that an alien could be appointed guardian of the estates of his minor children. However, it made it unlawful for any alien who had been appointed guardian of the estate of his minor child to enjoy, possess or have in whole or in part the beneficial use of land to which the child held title. It required an alien guardian to file a detailed annual report of all receipts and expenditures, and authorized the courts to require other reports. It further authorized the court to fix the bond and compensation of the alien and to set the attorney's fees in the case.

Section 8 of the Act of 1920 was amended to add a provision for the escheat of the interest in real property of a landlord or owner who knowingly or without reasonable investigation entered into a lease, cropping contract or other agreement with an ineligible alien involving an interest in real property less than a fee.

Section 10a was added by the 1943 amendment to provide that any person who violates the law shall be punishable by imprisonment in the county jail not to exceed one year or in the State penitentiary not to exceed ten years, or by a fine not exceeding $5,000. It is no longer necessary under this amendment to prove conspiracy to violate the Act. It is necessary only to prove violation of the law by an individual.

Section 10b authorized the Attorney General or the proper district attorney to institute injunction suits to enforce the law. Section 10c authorized the same officials to institute civil actions to obtain declaratory judgments of whether or not any agricultural land is being farmed or used in violation of the Act.

Section 11a was added. It provided that any persons signing leases, cropping agreements or other agreements to acquire, use, transfer, etc., land or to transfer the beneficial use of land shall be guilty of violation of the law, if such agreements are made in the name of the wife or child of an ineligible alien or in the name of any other person if such ineligible alien is permitted thereafter to farm such land or enjoy directly or indirectly the beneficial use thereof.

SUMMARY

1. Citizens of Japan are not eligible under the laws of the United States to become citizens of this country by naturalization, and the Alien Land Laws of California, since August 10, 1913, have restricted the right of such aliens in the ownership and occupancy of real property.

2. The laws are not retroactive, and titles acquired and vested prior to adoption of a particular prohibition, are not affected.

3. At all times since the passage of the first restrictive Alien Land Law in 1913, the privileges granted by the Treaty with Japan have been a part of the Law of California. These privileges give subjects of Japan the right to own or lease houses, manufactories, warehouses, and shops, and to lease land for residental and commercial purposes. They can not own land of any kind nor can they lease land for agricultural purposes.

4. Between August 10, 1913, and December 9, 1920, the Alien Land Law extended the privileges granted by the treaty, to allow ineligible aliens and corporations controlled by ineligible aliens to lease agricultural lands for a period not exceeding three years. This privilege was rescinded by the Act of 1920.

5. The prohibition against ownership of land by ineligible aliens includes companies controlled by ineligible aliens. This provision has been in the law at all times since August 10, 1913.

6. Ineligible aliens at all times since August 10, 1913 have been prohibited from taking real property by descent or devise. The probate court must order a sale of such property and distribute the proceeds to the alien. The Act of 1920 added membership or shares in companies owning real property to the types of property included in the prohibition.

7. The Alien Land Laws have all contained provisions for escheat to the state of real property or interests therein acquired in violation of the Act. Until June 20, 1923, an ineligible alien wrongfully holding title to real property could convey a good title to an eligible purchaser at any time prior to the institution of escheat proceedings by the state. Since the amendment of June 20, 1923, the law has provided for a so-called "automatic escheat" as of the date the ineligible alien acquired the property. By virtue of this provision it is possible that real property wrongfully acquired by an ineligible alien since June 20, 1923, and subsequently conveyed to an eligible purchaser, escheated to the state when acquired by the ineligible alien and could be taken by the state upon an action being brought for that purpose. This question has not been passed upon by the courts. Until it has been, the title companies will probably be reluctant to insure titles to land held under such circumstances. In the amendment of 1943, leasehold and other interests less than the fee in the hands of a transferee eligible to own such interests are excepted from the automatic escheat provision, provided escheat proceedings have not been initiated prior to the time of transfer.

8. Real property acquired in enforcement of a lien or mortgage was excepted from escheat under the Act of 1913 and could be held by the ineligible alien or corporation. After December 9, 1920, real property so acquired could be held only for two years.

9. Escheat provisions at all times since August 10, 1913, have applied to leaseholds and other interests in real property less than a fee. The Act of 1920 added shares of stock and membership interests in companies holding real property to the types of property subject to escheat. The amendment of 1923 added cropping contracts.

10. The Act of 1920 attempted to prohibit the appointment of ineligible aliens, or corporations controlled by them, as guardians of that part of the estate of minors consisting of real property or interests therein. The Supreme Court of California, in the case of Tetsubumi Yano's Estate, declared this provision unconstitutional. The amendment of 1943 to the Alien Land Law changed the law to conform to the decision of the court, and ineligible aliens are dclcared by statute eligible to be appointed guardians of their children's estates, subject to strict control.

11. Since enactment of the Law of 1920, guardians, trustees and agents for ineligible aliens or for their minor children have been required to make annual reports showing real or personal property held by them for such alien or minor, and all expenditures, investments and income in respect to such property. Persons violating the provision are subject to fine and imprisonment.

12. By the Act of 1920, every transfer of real property, or an interest therein, if made to evade or prevent escheat, was void, and the interest sought to be conveyed became subject to escheat. A prima facie presumption that a conveyance was made to evade the law or to avoid escheat arose upon proof that property was taken in the name of another but the consideration therefor was paid by an ineligible alien, or a mortgage was executed in favor of an ineligible alien and the mortgagee was given possession.

13. The Act of 1920 also provided criminal penalties for conspiracy to violate the Act. This provision was broadened and the penalties made more severe by the amendment of 1943, providing punishment for any person violating any of the provisions of the Act by imprisonment from one to ten years, or by fine not exceeding $5,000, or both.

14. The amendment of 1943 added a new section, providing criminal penalties for all parties involved in agreements to acquire agricultural property, or interests therein, where the parties know that an ineligible alien is to be allowed to farm or receive any of the benefits from the farming of such land.

15. The amendment of 1943 also added a provision for escheat of the interest in real property of the landlord or owner, as well as that of the alien, where the landlord or owner knowingly, or without reasonable investigation, enters into a lease, or other agreement involving an interest in real property less than a fee, with an ineligible alien.

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