

# SUIT WON BY JAPANESE

## IMPORTANT RULING BY CALIFORNIA JUDGE.

### Upholds Right of American-Born Children to Land Bought for Them by Father.

By Associated Press.

MARYSVILLE, Cal., Friday, March 10.—Right of two American-born Japanese children in possession of land purchased for them by their father, a native of Japan, was upheld yesterday in a decision said to be the first of its kind in California. It was rendered by Superior Judge E. P. McDaniel in the case of the state of California against Jusuke Shingu and his two minor children, Sumiye Shingu and Kiyoko Shingu. The land in question was purchased for \$3,500 from G. L. and Mary Douglas in Sutter County in April, 1919.

Attorney-General U. S. Webb sought to have the property escheated to the state on a claim of fraud and violation of the California anti-alien land law in the purchase of the land.

Judge McDaniel, who declared that he favored the anti-alien land law and had always held it was constitutional, said that under the constitution any American-born person has the right to possession in the United States of property in his own right. In regard to the purchase of the land by the father, Judge McDaniel said that proof of fraud was not conclusive, that Jusuke Shingu did not try to take possession, "but the law does not say he cannot advance the purchase price for the benefit of his children, who, as American citizens, are not under the disabilities which stand in his way."

#### Fourteenth Amendment Cited.

Attorney-General Webb stated that should the court hold the transaction to be within the law, it would require no proof to conceive rapidly expanding Japanese ownership of land, with 100,000 Japanese in California and their children rapidly increasing.

Judge McDaniel's answer was: "The statement describes an impossible situation, and if the fault exists, the blame and fault are basic, growing as they do out of possibilities created by the fourteenth amendment to the constitution of the United States, which declares that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside." Judge McDaniel said the state protected the rights of the minor children as grantees in the case.

The principal allegations in the complaint were that the defendant Jusuke Shingu was a native Japanese citizen and not eligible to citizenship in the United States.

In Sutter County, where the sale of land in question took place, application for letters of guardianship were made by Shingu for his two children and were denied by Judge Mahon on the ground that in the opinion of the court Shingu had purchased the land, not for his own children, but for himself.

#### Judge McDaniel's Ruling.

Judge McDaniel, in his opinion, said the grantors, C. L. Douglas and his wife, unless they were conspirators, intentionally endeavoring to aid the defendant to perpetrate a fraud upon the law and circumvent it, had the legal right to sell their property to American citizens.

"It was conceded by the attorney-general on oral argument that if the emperor of Japan, the mikado himself, were to visit California and find here a relative of Japanese extraction born in California and therefore under the fourteenth amendment to the constitution of the United States an American citizen, he might, in good faith, advance the purchase price and buy, in that way, land for his citizen relative.

"It was very earnestly contended by the attorney-general in this case that in all negotiations relative to the execution of the deed in question, the defendant Jusuke Shingu dealt with the property as his own, that the taking of title in the name of the minor defendants was a subterfuge, that the title was held by the minor children in trust and that at all times after the purchase of the land he dealt with the land as owner, established a home upon it, farmed and improved it, and had without restrictions the beneficial use and enjoyment thereof; that because the negotiations for the property were had and concluded and the first payment therefor made while one of his children was yet unborn, that that was

evidence of fraud vitiating the entire transaction."

"As a matter of fact the negotiations were not concluded while one of the children was unborn. Both children were alive upon the conclusion of the transaction.

"These children being infants and unable to contract for themselves, are fully protected by the laws of California and the father cannot alienate the property, can make no valid lease of the property to any one else, can commit no waste, can make no valid contract concerning it as the natural guardian. He legally cannot even manage the property of the children without being authorized so to do by appointment of court.

"It is brilliantly urged by the attorney-general that the evidence in this case shows an attempt to create a resulting trust in favor of the father, Jusuke Shingu, under Section 553 of the civil code.

"In this connection, however, it is the mind of this court that there is no evidence at all of any resulting trust (which cannot arise out of an attempted fraud upon the government). Nowhere in this transaction did the title ever nominally rest in the father, Jusuke Shingu, and it may be conceded that had the children been adults, capable of contracting, and even though American citizens, accepted the deed in question with the understanding between themselves and their father that they would merely hold the title to assist him in evading the force of the alien land law, that while still no resulting trust could have been created in his favor, the transaction would have been so tainted with the fraud not only on the part of Jusuke Shingu, but also on the part of the other defendants, a resulting trust might, impliedly, be created in favor of the state, through its escheat law in the laws of 1913."

#### Impossible Situation Described.

"This court is not blind," the decision said, "to the persuasive force of such argument in a proper case, but this is not such a case, even if theoretically there may be some semblance of truth in the argument.

"Practically it describes an impossible situation and if the evil exists, the blame and the fault are basic, growing as they do out of possibilities created by the fourteenth amendment to the Constitution of the United States.

"Even though the grantee in the deed are pure bred Japanese, nevertheless they are American citizens and as such are entitled to every right that any American citizen, from President Harding down, enjoys. They have as much right to own land as any citizen."

## Accused of "Planting" Booze to Cause Raid

Concealing liquor in a man's house with the intention of telling officers to raid the house, is the charge made against S. M. Dowell today by Sheriff Matt Starwich. Dowell is alleged to have been about to "plant" the liquor in the house of a man living near Auburn yesterday, when the sheriff and his deputies discovered him.

According to Sheriff Starwich, Dowell fled, leaving his car and the liquor. A charge of possessing intoxicating liquor was placed against him in Justice C. C. Dalton's court, and he posted \$250 bail today.

## Injured Park Employee In Serious Condition

H. A. Baker, Park Department employee who was injured in a blast of giant powder at Woodland Park Wednesday, was in a critical condition today at the Lakeside Hospital, where an X-ray examination showed Baker's skull was fractured. Baker was helping clear a section of Woodland Park set aside for an automobile tourists' camp when he was injured. He is 53 years old and resides at 2229 Federal Ave.

## Safecrackers Lose Tools in Retreat

With bullets from four police pistols whistling about them, two men, believed to be expert safecrackers, escaped last night after they had approached a dynamite cache in the rear of the Superior Laundry, 2219 Ninth Ave., where a safe was blown and looted ten days ago.

Officers had found the cache which included an electric drill in addition to the explosives immediately after.