

ALIENS: Right to hold and dispose of real estate in Missouri.

Alien Siamese subjects may own real estate in Missouri.

10-21
October 9, 1935.



Honorable Cordell Hull
Secretary of State
Washington, D. C.

Le 892.5211/23

Sir:

Your letter of September 19th, 1935, addressed to the Governor of Missouri, relative to the rights of Siamese subjects - who are ineligible to American citizenship - to own land in Missouri, has been referred to this department for attention.

In your letter you request us to furnish excerpts from the laws of Missouri, which determine whether Siamese subjects may own or lease land in the State of Missouri, together with any supplemental information which may be pertinent to the inquiry. Accordingly, we set forth herewith excerpts from the Missouri laws, which are applicable to the question, namely:

Section 313, Revised Statutes of Missouri, 1929:

"In making title by descent, it shall be no bar to a demandant that any ancestor through whom he derives his descent from the intestate is or has been an alien."

Chapter 121, Revised Statutes of Missouri, 1929:

1428 "Sec. 14011.--Aliens shall be capable of acquiring, by devise or descent, real estate in this state, and of holding, devising

or alienating the same, and shall incur the like duties and liabilities in relation thereto as if they were citizens of the United States and residents of this state.

152-9
"Sec. 14012.--Any female born in the United States, owning real estate or any interest therein in this state, who shall marry an alien and reside in a foreign country, may, at any time, notwithstanding such marriage or residence, convey such real estate, or any interest therein, by deed, or may at any time devise the same by last will: Provided, the same be done in either case in conformity with the general laws of this state concerning the conveyance of real estate by deed and the making of wills.

152-30
"Sec. 14013.--It shall be unlawful for any person or persons not citizens of the United States, or who have not lawfully declared their intention to become such citizens, or for any corporation not created by or under the laws of the United States or of some state or territory of the United States, to hereafter acquire, hold or own real estate so hereafter acquired, or any interest therein, in this state, except such as may be acquired by inheritance or in good faith in the ordinary course of justice in the collection of debts: Provided, that the prohibition of this section shall not apply to cases in

which the right to hold or dispose of lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries; which rights, so far as they may exist by force of any such treaty, shall continue to exist so long as such treaties are in force, and no longer.

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"Sec. 14014.--No corporation or association, more than twenty per centum of the stock of which is or may be owned by any person or persons, corporation or corporations, association or associations, not citizens of the United States, shall hereafter acquire or hold or own any real estate hereafter acquired in this state: Provided, that nothing contained in this chapter shall be construed to forbid any person or corporation from acquiring an interest in any real estate in this state as cestui que trust or mortgagee in any deed of trust or mortgage taken in good faith to secure the repayment of any money lent upon such real estate and interest thereon, nor as assignee of such cestui que trust or mortgagee, nor to forbid the person or corporation lending such money or becoming such assignee from purchasing such real estate at its sale upon foreclosure of said deed of trust or mortgage, when the amount for which such property is sold at said sale does not exceed the amount due under said deed of trust or mortgage at the time of such sale and the costs of such foreclosure: Provided, however, that

all right, title or interest acquired by such person or corporation at such sale or foreclosure shall be forfeited to the state of Missouri unless such person or corporation shall in good faith sell all of such right, title and interest to a citizen of the United States, within six years after the person or corporation so purchasing at such sale or foreclosure shall have held the possession of such real estate according to the interest purchased or acquired by him or it at such sale or foreclosure.

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"Sec. 14015.--All property acquired, held or owned in violation of the provisions of this chapter shall be forfeited to the state of Missouri, and it shall be the duty of the attorney-general, or circuit or prosecuting attorney of the proper city or county, to enforce every such forfeiture by bill in equity or other proper process. And in any suit or proceeding that may be commenced to enforce the provisions of this chapter, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights, either of the state or of the parties concerned, in any such proceeding arising out of the matters in this chapter mentioned."

What is now Section 14011 became the law of Missouri in 1872, and in 1895 Section 14013 was enacted restricting the right of aliens to own lands in Missouri.

The Supreme Court of Missouri in the case of *Pembroke v. Huston*, 180 Mo. 627, l. c. 639, had this to say relative to these sections:

"The right of an alien to acquire and hold real estate has been the subject of legislation in this State, from time to time, from an early date, the earlier statutes conferring qualified rights in that respect upon him.

"In 1872 our General Assembly enacted that: 'Aliens shall be capable of acquiring, by purchase, devise or descent, real estate in this State, and of holding, devising or alienating the same, and shall incur the like duties and liabilities in relation thereto as if they were citizens of the United States and residents of this State.' That statute passed into the revision of 1879 as section 325 and into that of 1889 as section 342, and was the law when the plaintiff acquired title to the Nodaway county land, and was the law until 1895, when the act which is now sections 4764-5-6, above quoted, was enacted and which was the law when the transactions in question occurred.

"The act of 1872 repealed those features of the common law which imposed disabilities on an alien in respect of his capacity to acquire and hold real estate. While that statute was in force an alien had as much capacity to acquire and hold real estate as a citizen had. But after an experience of more than twenty years

under the operation of that statute our General Assembly concluded to change the policy of the State in that particular.

"As the act of 1872 had repealed the common law on that point, it was at least doubtful, under section 4177, Revised Statutes 1899, if a mere repeal of that act would restore the common law, even if the Legislature had intended to restore it in its original form and effect; it was, therefore, doubtless deemed necessary in order to accomplish its purpose that the Legislature should by affirmative act withdraw from the alien the right that had been conferred on him by the act of 1872. When the Legislature in the act of 1895 said it shall be unlawful for an alien to acquire land by purchase, it did not mean that an alien in taking a deed to land was to be regarded as a lawbreaker or one guilty of an offense, but it only meant that the right that had been conferred on him by the act of 1872 was withdrawn, and that the disabilities that the common law had formerly imposed were now to be imposed by statute, except as in the statute itself otherwise provided. Some of the words of the statute give plausibility to the contention that title can not pass to the alien at all, the words being that it shall be unlawful for the alien 'to hereafter acquire,' etc., but when those words are taken with the immediate context that idea disappears. The language is that

it shall be unlawful for the alien 'to hereafter acquire, hold or own real estate so hereafter acquired.' The sense is awkwardly expressed; there could be 'no real estate so hereafter acquired' if we give literal meaning to that part of the sentence which says that it shall be unlawful 'to hereafter acquire' such property. This meaning is further shown by the language in the beginning of Section 4766: 'All property acquired, held or owned in violation of the provisions of this chapter shall be forfeited to the State of Missouri,' etc.

"That is an express recognition that real estate might be acquired by an alien after the passage of the act, but that whenever the State called for it the alien should surrender it. That is just what the common law was on that subject.

"The act of 1895 was intended to reinstate the common law on the subject of the acquiring by purchase of real estate by an alien; under that statute an alien can take by purchase a defeasible title and hold it subject to the same conditions that the common law imposed."

From the above and foregoing statutes and the above case construing same, it is our conclusion that alien Siamese subjects - who are ineligible to American citizenship - may own and lease lands in Missouri.

Section 14015, R. S. Mo., 1929, quoted above, imposes the same conditions on the alien in the ownership of lands as was imposed by the common law, that is, he has

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a defeasible estate subject to forfeiture only by the attorney-general, or circuit or prosecuting attorney of the proper city or county, to enforce such forfeiture. The proviso in Section 14013, R. S. Mo., 1929, recognizes and reaffirms the supreme treaty-making powers of the United States government, securing to aliens the right to hold or dispose of lands in the United States as such treaty so provides.

It is our opinion, therefore, that Siamese subjects, although they are ineligible to American citizenship, yet have the right to hold and dispose of lands in Missouri, subject to forfeiture by the State, and subject to the treaty-making powers of the United States government.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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